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Juvenile Code Revision Committee



1979
REPORT



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THE FINAL REPORT
OF THE
JUVENILE CODE REVISION COMMITTEE

Raleigh, North Carolina

January, 1979

J. Phil Carlton, Secretary
Department of Crime Control and Public Safety

Judge George F. Bason, Chairman

This report was printed by the Division of Crime Control of the State of North Carolina in accord with federal guidelines and funds administered by the Law Enforcement Assistance Administration of the United States Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 as amended. (Action Grant No. 76-01-A01-1628).

The Juvenile Code Revision Committee is submitting this report to the 1979 Session of the General Assembly in accordance with Senate Bill 62 of the 1977 Session of the General Assembly.

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PREFACE BY J. PHIL CARLTON

This report of the North Carolina Juvenile Code Revision Committee is as important to the future of North Carolina as any the Governor and the 1979 General Assembly will receive. It is a vital part of this Administration's review of our State's criminal justice system and is printed separately from its parent publication, A CRIME CONTROL AGENDA, both because of its importance and its length. I am delighted to join in transmitting it because its many recommendations will bring major progress to our juvenile justice system.

The Juvenile Code Revision Committee was created by the 1977 General Assembly as an adjunct committee of the Governor's Crime Commission and organizationally placed in the Department of Crime Control and Public Safety. The statute creating the Committee succinctly sets out its major tasks and responsibilities. GS 143B-480(c)(6) provides as follows:

The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the District Court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct Committee shall terminate on February 28, 1979.

It would be redundant to set out here the many reasons for creating this study committee. Suffice it to say that juvenile "crime" and undisciplined conduct have increased at an alarming rate in North Carolina and the nation as a whole. The disproportionate percentage

of all crimes committed by young people has been noted elsewhere in this report. It is the most serious problem we have in terms of controlling crime in North Carolina.

North Carolina's natural, but unfortunate, tendency over the years has been to address the problem in piecemeal fashion. We have reacted instead of prepared. We have acknowledged instead of provided. We have legislated but not funded. We have superfluous laws, outmoded laws and inadequate laws. We have fragmented and duplicated services. We need a change.

This report represents the kind of progressive change our system needs. The Committee has addressed all of the statutory assignments and more. It has explored the needs of the entire juvenile system and considered the many alternatives to meet those needs. In a vast and complex field, one in which people of conviction have serious philosophical disagreements, it has reached the sensible consensus reflected in this report. While there is probably no one in North Carolina who would agree with every single one of the Committee's recommendations (indeed I don't), it represents the best thinking of those who have spent nearly two years in serious study and deliberation, and it is an excellent plan.

I have never seen a committee work any harder than this one. The members of the Committee have spent an incredible amount of time and energy in this area of our public life in which emotions run high. Chief District Court Judge George Bason of Raleigh, who served as Chairman of the Committee, Project Director Sarah Patterson, and Research Associate Robert Collins are to be especially commended for their hard work. All North Carolinians owe a great deal of gratitude to every single Committee member.

We applaud the Juvenile Code Revision Committee for this product of their unrelenting labors and commend it to the General Assembly as a new Juvenile Code which will make immeasurable contributions to the control of crime in North Carolina.

J. Phil Carlton
Secretary
DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY



General Court of Justice

10th Judicial District

WAKE COUNTY

RALEIGH, NORTH CAROLINA

December 1, 1978

JAMES H. POUL BAILEY
SENIOR RESIDENT SUPERIOR COURT JUDGE
A. PILSTON GODWIN, JR.
RESIDENT SUPERIOR COURT JUDGE
EDWIN S. PRESTON, JR.
RESIDENT SUPERIOR COURT JUDGE

DISTRICT COURT JUDGES
GEORGE F. BASON, CHIEF
HENRY V. BARNETTE, JR.
STAFFORD G. BULLOCK
GEORGE R. GREENE
JOHN HILL PARKER
S. PRETLOW WINBORNE

The Honorable James B. Hunt, Jr.
Governor of North Carolina
State Capitol
Raleigh, North Carolina 27602

Dear Governor Hunt:

It is my pleasure to submit herewith the report of the
Juvenile Code Revision Committee.

Our statutory assignment was at once both challenging
and humbling.

Our product is a composite work reflecting the geographic
and professional diversity of our committee members as well as
the diversity of views of participants at our public hearings.

It is the hope of the Juvenile Code Revision Committee
that our proposals will merit your endorsement.

It is our sincere belief that enactment of our proposals
is a necessity if North Carolina is to provide the administrative
framework to care for juveniles in trouble and if we are to
provide the procedural framework to protect the rights of
juveniles and the interest of the State.

Very truly yours

George F. Bason, Chairman
Juvenile Code Revision Committee

GFB:sj

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ACKNOWLEDGMENTS

The Juvenile Code Revision Committee and staff wish to express our gratitude to Governor Jim Hunt for the opportunity to serve the children of North Carolina.

The Juvenile Code Revision Committee and staff wish to extend our appreciation to the Administrative Office of the Courts and the Department of Human Resources for their continuous interest and cooperation. And we wish to acknowledge the openness, candor, and cooperation of dozens of staff persons within these agencies.

The Juvenile Code Revision Committee and staff wish to thank the many persons appearing at the fifteen public hearings held across the State as well as those persons making written presentations to offer support, constructive criticism, and often viable alternatives for Committee consideration. A list is included in the addenda.

The Juvenile Code Revision Committee and staff wish to thank the North Carolina Juvenile Services Association and Captain S. B. Simpson and the Juvenile Officers' Association for their valuable insights based on experience.

The Juvenile Code Revision Committee and staff wish to thank the staff of the agencies and programs visited by the staff for their assistance in responding to inquiries by the Committee. A list is included in the addenda.

The Juvenile Code Revision Committee and staff wish to express gratitude to Susan Sabre of the staff of the Legislative

Bill Drafting Office of the General Assembly for her invaluable assistance in preparing the final legislative drafts contained in this report.

Finally, with deepest appreciation the Juvenile Code Revision Committee and staff wish to thank Mason P. Thomas of the Institute of Government for his timely and provocative advice and counsel and for the many hours he selflessly devoted to the work of the Committee.

INTRODUCTION

The Juvenile Code Revision Committee was established by the 1977 General Assembly as an adjunct Committee of the Governor's Crime Commission. Since members were sworn in on April 15, 1977, the Committee has met bi-monthly to study existing laws pertaining to juveniles in North Carolina, to examine legislation and programs of other states and to review the Juvenile Justice Standards of the Institute of Judicial Administration and the American Bar Association and recommendations of other study commissions to present to the North Carolina General Assembly a cohesive report outlining a coordinated working approach to our juvenile justice system.

At the outset, the Committee solicited information by contacting the heads of all state, local and county agencies dealing directly or indirectly with children including sheriffs, chiefs of police, Juvenile Officers Association, the N.C. Criminal Justice Academy, Mental Health, social services, chief court counselors, Juvenile Services Association, group homes, superintendents of schools, county managers, colleges and technical institutes with juvenile justice programs, district attorneys, public defenders, and judges. Several agencies and organizations designated liaisons to work with the Committee to provide input from the local level.

The Committee attempted to analyze and catalogue services available to children, particularly juveniles in trouble with the law. Various committee members met with persons at the administrative as well as the field level from the Department of Human Resources, the Division of Social Services, the Division of Youth Services, the Division of Mental Health, the Juvenile Services Division of the Administrative Office of the Courts, and the Department of Public Instruction in an effort to fully understand existing programs and the present service delivery system. The Committee evaluated comments and criticisms from those interviewed as well as studied the recommendations embodied in various model codes and analyzed organizational innovations being tried in other states. One goal of the Committee was to increase the quality and availability of juvenile services by considering new methods for service delivery, eliminating duplication, and promoting cooperation among child serving agencies.

Staff services for the Committee were provided by the Division of Crime Control of the Department of Crime Control and Public Safety under a grant made to the Division by the Governor's Crime Commission (Grant # 76-01-A01-1628).

Given a broad mandate by the North Carolina legislature, the Committee determined that the scope of its inquiry should not be restricted to matters which could be controlled or modified by court order.

Many of the recent studies conducted in the area of juvenile justice have been with reference to the violent and chronic juvenile offender. In 1975, 43 percent of all arrests for serious offenses involved juveniles. Young people aged thirteen to seventeen who constitute 10 percent of the population comprised 21 percent of those arrested for violent crimes including 32 percent of all arrests for robberies, 17 percent of arrests for rapes, 16 percent for aggravated assaults and 9 percent for homicides.¹ In North Carolina in 1975, juvenile arrests constituted 10.7 percent of all arrests including 23.7 percent of all burglary or felonious breaking and entering arrests.² Although those statistics reflect percentages of arrests rather than convictions, the evidence is clear that young offenders commit a disproportionately large percentage of serious crimes which declines as age increases and that the probability of arrest, conviction and incarceration lessens as age increases rather than when the offender is young and more active. Hearings before the United States Senate Subcommittee to Investigate Juvenile Delinquency on April 10, 12, 1978 revealed through the testimony of Professors Albert Reiss of Yale and Walter Miller of Harvard that while young offenders aged 15 to 18 comprise 7 percent of the total population, they account for 16 percent of all violent crime arrests and for 46 percent of major crimes against property. Although there is great concern expressed by the citizens of North Carolina about the problems of juvenile delinquency,

the most apprehension is generated with regard to the serious offender.

As one means of gauging the extent and seriousness of the problem of the serious offender in North Carolina and of delineating the issues of concern in the area of juvenile justice, the Committee held five public hearings in 1977. The Committee studied those concerns addressed and others designated by staff at its 24 full committee meetings and 13 subcommittee meetings during its 19 months of study. Before developing the Committee's final recommendations, the Committee held 10 additional public hearings across the State to receive input and suggestions based on tentative recommendations presented at that point. Those hearings were in addition to the five public hearings held in 1977 to receive concerns.

Meetings were open to the public and an effort was made to reach as many people as possible for input. Contact was maintained with the Juvenile Services Association, the Juvenile Officers Association, and state and local agencies within the juvenile justice system. The Juvenile Services Association and the N.C. Justice Academy played a vital role in utilizing its summer workshop to discuss the work of the Committee and in preparing a report outlining problems that needed to be addressed by the Committee including various approaches for consideration.

The Report of the Juvenile Code Revision Committee contains separate but interdependent sets of statements and recommendations as well as a proposed North Carolina Juvenile Code.

Included in the report is a summary of the development of the juvenile justice systems in the United States and more specifically, in North Carolina. Following that summary, the Committee has addressed with discussion and recommendations several issues of critical importance in juvenile justice in North Carolina: status offenders, role of the schools in delinquency prevention, intake, detention, roles and responsibilities of law enforcement, juvenile corrections including review of the increasing problem of serious juvenile offenders, coordination of services including a recommendation for establishment of an Office for Juvenile Justice, training of juvenile justice professionals including certification of juvenile court judges, and child abuse.

Members of the Juvenile Code Revision Committee, despite varied backgrounds and divergent points of view, find common ground in a dedication to the rights of children and to the unique nature and dignity of each child. Each was determined to make our existing system work better where possible and to supply alternatives where necessary. Chief among concerns of the Committee is the upgrading of programs and services necessary to the court's capability for implementing the code. Comprehensive planning based on sound standards of service delivery must be undertaken and those plans must be implemented through adequate funding. In too many instances, juvenile justice agencies have been mandated to accomplish stated goals and have been told to do so with already depleted resources.

Adequate appropriations are essential to "the ultimate accomplishment of our noble goals" rather than simply paying "lip service to new directions."³

The Committee believes that, with the support of the people of North Carolina and their representatives in the legislature, the juvenile justice system will rise to the status it deserves. It is the hope of the Committee that the recommendations and legislation proposed in this report offer a significant step toward achieving that goal.

Background: History of the Juvenile Justice System

Juvenile justice in the United States is usually described as progressing through several major reforms. The opening of the New York House of Refuge in 1825 constituted the first separate juvenile institution for child offenders and neglected children. Massachusetts provided separate court hearings for juvenile offenders as early as 1870 in Boston and separate juvenile records in 1877.

New York enacted legislation to prohibit incarceration of children in prisons in 1877. In 1898 Rhode Island provided separate pre-hearing detention of children in facilities other than jails. Then in 1889 Illinois embodied in legislation the various concepts of reform and proposed what became a model for the development of a juvenile court.

The evolution of a separate court for juveniles offering informal procedures was seen as a special effort to protect

juvenile offenders from the stigma of a criminal conviction and to provide for treatment or rehabilitation based on an evaluation of the needs of the child.

After 1899, both delinquent and predelinquent children came within the jurisdiction of the court. Under the doctrine of parens patriae, the State was allowed to intervene as a substitute parent in certain situations.

The judge conducted an informal, non-adversarial hearing. The judge exercised full discretion to determine an outcome that was in the best interests of the child and a disposition to rehabilitate the child by changing the pattern of the child's behavior which had been found unacceptable. Notions of procedural due process were abandoned in the spirit of social reform.

Development of a Juvenile Court in North Carolina

The North Carolina Constitution of 1868 provided a framework for a juvenile court in North Carolina. It mentioned the State's responsibility in providing for the "poor, the unfortunate and the orphan;" it provided for the establishment of houses of refuge, houses of correction and orphan houses. Children were confined in the state penitentiary from its institution until 1869. Mason P. Thomas, Jr., in Juvenile Corrections and Juvenile Jurisdiction (1972), describes the use of executive clemency by North Carolina governors to

remove children from prison. He writes:

The first available list of pardons shows that Governor Holden pardoned a ten-year-old in 1869 who had been sentenced to prison for a year for assault. Another case involved a youth who was sentenced to three years for stealing a goose valued at ten cents.

These child prisoners varied in age from 8 to 20.

The legislative documents containing lists of pardons by various governors show that more than 150 youthful prisoners were pardoned between 1869 and 1909 in order to remove them from adult prisons, particularly Central Prison in Raleigh.

Support for a separate juvenile correctional system gained momentum until 1907 when Stonewall Jackson Manual Training and Industrial School was established. The school opened in 1909 to accept children under sixteen years of age who were convicted of violating a criminal offense.

The first legislation providing special treatment for youthful offenders in the courts came in 1915. The Probation Courts Act (Public Laws 1915, Chapter 222), which applied to youthful offenders who were eighteen years old or younger, introduced new concepts into North Carolina law including juvenile delinquency, use of probation, closed hearings for juveniles, and separate juvenile records. These concepts were subsequently incorporated into the juvenile court legislation of 1919.

The National Child Labor Committee had studied conditions in the state affecting children and the report which followed was published in 1918 and entitled Child Welfare in North Carolina. Contained therein were proposals of Charles L. Chute, a social worker with the National Association of Probation Officers (now the National Council on Crime and Delinquency). The 1919 General Assembly enacted the proposals as recommended except that the legislation included children under the age of sixteen rather than under eighteen as suggested in the report.

1919 Juvenile Court Statute

The clerk of superior court was given jurisdiction over children less than sixteen years old who came within these categories: delinquent, truant, unruly, wayward, misdirected, disobedient to parents or beyond their control or who is in danger of becoming so, neglected, dependent upon public support, destitute, homeless, abandoned, or whose custody is subject to controversy. The categories were not defined by the statute. Once jurisdiction attached, it continued until the child was twenty-one years of age. The clerk, as juvenile judge, was given discretionary authority to exclude the general public from juvenile hearings. Separate juvenile records that were to be withheld from public inspection were to be maintained. A juvenile petition initiated a juvenile case

and notice was by summons. See former G.S. § 110-29 (1965 Replacement). Children were to be held separate from adult offenders in local jails. See former G.S. § 110-30 (1966 Replacement). The county welfare department was to provide juvenile probation services, and appropriate conditions of juvenile probation were specified. See former G.S. § 110-31 through 110-33 (1966 Replacement). A statute applicable to adults who contributed to the delinquency and neglect of children was included. See former G.S. § 110-30 (1966 Replacement). Appeals were to Superior Court. See former G.S. § 110-40 (1966 Replacement). In upholding the constitutionality of the state's juvenile court law, the North Carolina Supreme Court relied on the doctrine of parens patriae [State v. Burnett, 179 N.C. 735 (1920)].

Emergence of Due Process and Constitutional Rights

The year 1967 marked a new turning point in juvenile justice. Both the President's Task Force Report on Juvenile Delinquency and Youth and Crime and In re Gault, 387 U.S.1. (1967), challenged the notion that the best intentioned judge, given unlimited discretion, could achieve the goals of juvenile courts. In describing the juvenile justice system, the report said, "It has not succeeded significantly in rehabilitating delinquent youth, in reducing crime or even stemming the tide of juvenile criminality, or in bringing justice and compassion to the child offender."

The Gault case began to define the procedural rights of juveniles. Earlier in Kent v. United States, 383 U.S. 541 (1966), the United States Supreme Court held that the juvenile was afforded "neither the protections afforded to adults nor the solicitous and regenerative treatment postulated for children."

The line of cases since Gault has perpetuated the dualistic nature of the Court's decision. Juveniles are entitled to some procedural protections and not others. Although they can be deprived of their liberty as a result of juvenile court intervention, the basis for intervention is treatment and rehabilitation. Therefore, the juvenile court has not been prevented from pursuing its rehabilitative goals by formalizing its procedures to further due process with provision of the right to trial by jury (McKeiver v. Pennsylvania, 402 U.S. 528, 1971).

Footnotes

1. Komisar, Luby, "Putting Johnny in Jail: How Real is the Juvenile Crime Scare?" Juris Doctor, Volume 3, No. 5 (June/July 1978).

2. Compiled by the Division of Crime Control from information provided by the North Carolina Department of Justice's Police Information Network.

3. Pagett, Don L., Presentation to the Juvenile Code Revision Committee. Asheville: July 7, 1978.

STATUS OFFENDERS

Status offenses are acts by juveniles that are socially undesirable but which do not violate any criminal statute. The term status offender refers to a child who has done nothing which would be illegal if done by an adult. In North Carolina, a status offender comes to the attention of the juvenile justice system as an "undisciplined child," which is currently defined in G.S. § 7A-278 (5) as "any child who is unlawfully absent from school, or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control, or who is regularly found in places where it is unlawful for a child to be, or who has run away from home."

The issue of what resources, services, and sanctions should be available for children who have committed a status offense is one which the Juvenile Code Revision Committee has spent a great deal of time studying and discussing. The treatment of this sensitive juvenile problem area can have very significant immediate and long-term effects on North Carolina's efforts to reduce crime.

In the last few years there has been increasing national concern over the issue of status offenders. Until recently in many states, a child who had committed a status offense, such as truancy, was within the delinquency jurisdiction of the juvenile court, was subject to the same penalties, and could have been confined in the same institutions as a child who had committed

armed robbery or murder. This has changed in many jurisdictions but it is still a reality in some states.

North Carolina adopted a policy to speak to this issue. G.S. § 7A-286 (4) reads: "A child should not be committed to training school or to any other institution solely for unlawful absence from school: such child should generally be helped through community-level resources. A commitment to training school or to any State institution is generally appropriate only for a child over 10 years of age whose offense would be a crime if committed by an adult and where the child's behavior constitutes some threat to the safety of persons or property in the community so that the child needs to be removed from the community for the protection of the community."

However, prior to July, 1978, the door was left open for the possible commitment of status offenders to training school in G.S. § 7A-278 (2) through the definition of delinquent child which included "any child who has committed any criminal offense under State law or an ordinance of local government; including violations of the motor vehicle laws or a child who violated the conditions of his probation under this article."

By this mechanism a child who was regularly disobedient to his parents could have been adjudicated undisciplined and placed on probation. Conditions of the child's probation could have included regular school attendance and respect for parental authority. If the child was again brought into court for disobedience or skipping school, there could have been a

finding of delinquency based solely on violation of probation. Where that occurred, the child was subject to the same sanctions as a juvenile who had committed a crime.

Partially as a result of this process, the North Carolina Bar Association's Penal System Study Committee in its 1972 Report on the North Carolina Juvenile Corrections System, As the Twig is Bent, noted that "North Carolina has the unenviable distinction of ranking first among all the states in the number of children committed to juvenile training schools per capita." They further asserted that "the Committee is of the opinion that approximately fifty percent of the children in our training schools should never have been sent there. This opinion is shared by staff personnel of the training schools, child psychiatrists and psychologists who are professionally involved with these students. They candidly state, and we concur, that our training schools are a 'dumping ground' for the mentally retarded, the uneducable, the runaways, pregnant girls, the neglected and, in many instances, simply the unwanted child. The only offense that many of the students have committed is that they do not like or cannot adjust to school."

In response to this observation and to the growing national concern over the incarceration of status offenders, the North Carolina State Legislature enacted into law House Bill 456 in 1975. House Bill 456 states that "the primary intent of this act is to provide a comprehensive plan for the development of community-based alternatives to training school commitment so

that 'status offenders' may be eliminated from the Youth Development institutions of this State. Additionally, it is the intent of this legislation to provide noninstitutional disposition options in any case before the juvenile court where such disposition is deemed to be in the best interest of the child and community."

In addition, G.S. § 143B-210 states "to fully implement the legislative intent and purposes of this act, G.S. § 7A-278 (2) is rewritten to omit the words 'or a child who has violated the conditions of his probation under this article'..." However, this provision was not scheduled to become effective until July 1, 1977, in order to allow time for development of community alternatives, and the 1977 Session of the legislature extended the effective date to July 1, 1978.

Present Questions

It was in light of this background that the Juvenile Code Revision Committee approached the issue of status offenders in North Carolina. In an effort to fully understand the scope of the problem, the Committee conducted public hearings, met informally with professionals throughout the State who deal with juveniles on a daily basis, surveyed practices and recent legislation in other states, and consulted national organizations that have prepared detailed studies of juvenile justice in this country.

The Committee heard many valid arguments, both pro and con, concerning the use of the juvenile court to handle the status offender problem. Those who favor the use of juvenile court jurisdiction point out that in many instances parents cannot or will not adequately discipline their children. In these situations there must be some authority which can intervene and curb the child's anti-social behavior, with or without the consent of the parties involved. Judge Lindsay Arthur, former President of the National Council of Juvenile and Family Court Judges, contends that although status offenders' behavior may seem relatively insignificant, it is in many cases indicative of some serious underlying problem possibly even more serious than may be indicated by a criminal act.

Thomas D. Gill, writing in Juvenile Justice, in an article entitled "The Status Offender" insists that "experience to date clearly indicates that the great majority of status offenders represent children who are having inherent problems with authority, problems which in turn can but rarely lend themselves to successful resolution save through the proper use of authority." Many judges who have presided over juvenile court believe that this proper use of authority, of necessity, includes the possibility of commitment to an institution such as our training schools in order to effectively deal with the problem. Without this "ultimate sanction," they feel that it may be impossible to force uncooperative children to participate in treatment programs which could identify the underlying cause of the antisocial acts the child has committed.

It is also contended that a large number of status offenders engage in delinquent behavior for which they are not caught. Supporters of juvenile court jurisdiction over status offenders believe that it is less stigmatizing for the juvenile and easier for the authorities to bring a child to the attention of the court through status offense jurisdiction than to attempt to prove a delinquent act. In this manner, a problem child can receive the assistance of the services available to the court sooner and with a minimal impact on the child's juvenile record.

Those who oppose the use of the juvenile court to deal with status offenders contend that it is patently unjust for the State, via the juvenile justice system, to subject youths to incarceration for "non-criminal" behavior.

There are also indications that the confinement of status offenders is frequently exercised in a manner which evidences racial, economic, and sexual discrimination. The poor child, the minority child, and the female child in most instances represent a substantially greater percentage of students in training schools in the nation than in the overall population.

In many instances, the state correctional process appears to serve as a graduate school of crime for status offenders. The National Association of Counties, in its publication, Juvenile Delinquency: A Basic Manual for County Officials, cites

the fact that most juveniles who commit delinquent or pre-delinquent acts but stay out of the formal court process keep within the range of their first offense. For example, if they start with shoplifting, they stick to petty larceny and rarely move on to robbery, but juveniles who pass through the training schools tend to move on to more serious offenses.

Committee Conclusions

The adversary process in court tends to pit parent against child, which may exacerbate family problems which are often the underlying cause of the situation. The Juvenile Code Revision Committee recognizes that use of the formal judicial process for all but the serious status offender often complicates a difficult family situation.

1. The Committee recommends that status offenders be diverted at intake to programs which address their needs.

Although the vast majority of professionals dealing with juveniles are dedicated and serious about their responsibilities, there are areas in which the community agencies and services could develop effective programs for status offenders but have fallen into the easy practice of referring these problems to the juvenile court and on to state training schools. Without the possibility of placement at training schools, local resources are being encouraged to formulate programs for status offenders.

2. The Committee recommends that when jurisdiction of the court is exercised over the status offender, confinement in secure custody shall be for no longer than twenty-four hours and that commitment to a training school shall be prohibited.

The Committee understands the reluctance of judges to assume responsibility for status offenders without the possibility of incarceration to give authority to their orders; however, the Committee believes that the intake counselors can and will direct these children to programs and services which will better suit their needs. Studies indicate that rehabilitation programs that are the most successful are voluntary. Some argue that status offenders who participate in local programs under the threat of incarceration may resist the program and may become delinquent. In addition, the Committee concludes that it is contrary to North Carolina's standards of justice to allow the possibility of confinement for a class of individuals who are not proven criminal lawbreakers.

Presently, the entire burden of the child's behavioral problem is placed on the child's shoulders when it is frequently the parents who are at least equally responsible.

3. The Committee recommends strengthening sanctions for uncooperative parents.

Petitioning the court to find that their child is "beyond their disciplinary control" could provide a convenient method for parents to evade their own obligations and vent their hostility toward their off-spring. Furthermore, formal juvenile court jurisdiction over any but the most serious sta-

tus offenses may not promote the most efficient use of State resources. The resources available to the court, both in personnel and budget, are limited.

The emphasis of the court should be upon counseling to the family as a unit. The Committee stresses the need for expanding vocational education opportunities for young persons 14 to 18 years of age and has included in the proposed legislation a provision for emancipation of a juvenile who is over 16 years of age; however, the Committee believes that court jurisdiction over the status offender should be limited to the juvenile under 16 years of age.

4. The Committee recommends that the age limit for jurisdiction over undisciplined juveniles be lowered to include only juveniles under 16 years of age.

Reduction of the age limitation would, first of all, eliminate some confusion by coordinating the age limits for both delinquent and undisciplined behavior. This should also simplify matters in that juveniles are not subject to compulsory school attendance beyond the age of 16 so that truancy is not an issue after that time even under current statutes. Finally, the Committee finds that court action in the case of a runaway or disobedient juvenile is rarely effective in improving the family situation after the juvenile has reached his sixteenth birthday.

THE SCHOOL'S ROLE IN DELINQUENCY PREVENTION

The Juvenile Code Revision Committee studied at length the school's role in delinquency prevention to try to define the relationship that does and that should exist between the schools and the juvenile justice system.

Governor Jim Hunt, in his keynote address to The Governor's Conference on the Role of the Schools in Dealing with Status Offenders and Delinquency Prevention, acknowledged that "next to the family, the schools are the most important social institutions that influence the growth and development of our children and the growth and development of our society."¹ The Juvenile Code Revision Committee supports this view and recognizes that public schools are potentially the State's most effective tool in preventing delinquency.

Our schools accept a five and six-year-old child and until that child has reached young adulthood, exercise a significant amount of influence in the development of his habits, character, motivations, and self-concept. The schools do more than teach academics; they mold people.

It is unrealistic to argue about whether or not the school should be responsible for the behavioral tendencies and emotional adjustment of the pupil. The plain truth is that school experiences bear a direct relationship to the character development and adult personality of the child and in that respect, the schools are responsible whether or not educators accept and meet this responsibility. The school

is made up of a physical plant, teachers, students, and materials. The quality of their interaction and of the interaction between the school and the world outside can lead to or impede an educational experience which may prevent or contribute to delinquent behavior.

This is not meant to imply that our schools are solely responsible. Parents must play the key role in rearing their children. There are also many additional factors involved, from varying social values among the population as a whole, to the influence of television, to peer group pressures. The fact remains, however, that one thing every child has in common is that at some point they attend school. Even with only six hours a day to serve as a role model, a teacher spends more time in direct contact with a child than most parents.

One of the first considerations of the Committee was to ask: What can one do to contribute to the self esteem of a child who is not achieving during his first few years in school? Educators from the Department of Public Instruction agreed that most important to the building of self-esteem for a child is his satisfaction in achievement. Governor Jim Hunt is certainly on point in his emphasis on reading and basics. It is at this earliest level that such a program can be most beneficial.

Many students who have difficulty in school exhibit indications of this at an early age. There are also students at the high school level who could benefit from counseling

but who unfortunately may not receive that help due to priorities established for guidance counselors.

1. The Committee recommends that the state's school counseling program be standardized and expanded.

Counselors in elementary schools and junior high schools should spot learning problems early and attempt to help the child overcome the difficulty whether the source is the family, teachers, peer group, or a medical problem. Further, additional counselors should be available in high schools to reduce caseloads and provide adequate guidance counseling to students that are not college bound. There are 1,320 counselors presently employed from state funds providing for .65 counselor per school. Demand for services rendered by school counselors is increasing at the junior and senior high school levels, and society changes reveal the necessity of providing services in the lower grades as well. The role of the counselor as well as that of the school social worker should be clarified, however, before any mass increase in school counselors is legislated. Too often the school counselor's time is consumed with clerical duties. Too often there is no one to assist a student with deep-rooted emotional problems in receiving treatment. The school system now has 369 social workers and 109 psychologists employed from state funds. Rather than expand those programs, the Committee would recommend greater interagency coordination and cooperation so that existing Social Services and Mental Health personnel are more easily

accessible to the schools. The counselor who has work experience only in education often belittles a career in vocational education. Little mention is made to a student that a plumber, an electrician, a textile worker have greater incomes than most teachers. Too often there is no one to assist a student who is not college bound with career planning.

2. The Committee recommends that the Department of Public Education foster greater coordination and cooperation between the public schools and the community colleges and technical institutes.

Coordination should include the cooperative use of facilities and equipment as well as the formulation of procedures for a public school drop-out to attend community colleges and technical institutes at an earlier age than is now allowed. Non-college preparatory training must be modified and updated so that more youth will be fed into the labor market at middle rather than low levels. This will also create reasonable and realistic prospects for upward mobility through channels other than the traditional one of college graduation.

3. The Committee recommends that the Department of Public Instruction emphasize career awareness in the early grades.

This could be done by expansion of vocational education programs, both in terms of the range of fields covered and the ages and numbers of students participating. Our schools will never be effective until they can offer a curriculum which speaks to the needs of all students.

Another important issue in judging the effectiveness of our schools is whether or not a child actually attends school enough days to profit from this experience.

4. The Committee recommends that parents be held more accountable for their child's school attendance.

The Committee recognizes that parents must accept more responsibility in insuring that their child attends school. To this end, the Committee has prepared legislation which will assure that parents are notified of their child's absences as soon as it appears that there may be a truancy problem. After a specified number of absences, parents will be informed that they may be prosecuted under the general compulsory attendance law and school attendance counselors will be required to visit the child and encourage regular school attendance. Finally, after additional absences, the burden will be placed on the child's parents to demonstrate that they are not responsible for their child's absences.

The schools must share the responsibility of insuring that a child receive an education. In the past it has been far too easy to avoid dealing with a difficult student by suspending or expelling him. There have frequently been too few resources in the schools, and school personnel must concentrate on the majority of students who want to learn or cause no disruption. Governor Hunt has said: "I believe that there are times when a child has to be taken out of school because of the way that child appears to other children, students,

and teachers. We must have the courage and good clear and fair rules to abide by. But I also know that it does no good to take a child out of the classroom, and out of the school, and then simply put him on the street. Now that may solve the problem for the school, but it does not solve the problem for that community, the State or that child."²

5. The Committee recommends that the Department of Public Instruction study the components of various in-school suspension programs and alternative school programs to develop models that may be used by public school systems in developing alternatives to address those children with special needs.

In addressing this problem, several schools have established-- and the Governor's Crime Commission has funded--several in-school suspension programs or alternative school programs. Others have been funded locally and provide viable alternatives to the traditional school setting. One such program reflecting open lines of communication and coordination between the schools and the court is the Ocean Sciences Institute in New Hanover County.

Another aspect of the issue of keeping children in schools is the problem of absenteeism. As of July 1, 1978, the threat of training school was removed for the child who will not attend school. The Committee supports this action, believing that training schools are inappropriate for non-criminal activity. At the same time, education frequently involves hard work and many students need encouragement in order to learn. One approach to meet this need would be to upgrade the position of

attendance counselor. The approach of the truant officer is outdated and has shown that it fails to resolve underlying problems causing school absence. Specific duties and responsibilities should be set out embodying this philosophy.

6. The Committee recommends that legislation be introduced to provide minimum standards for attendance counselors, to set a counselor/student ratio and to establish uniform salary ranges.

Attendance counselors are currently salaried by the local government. In most of the 145 school administrative units, there are no minimum educational requirements for the attendance counselor and the salary accompanying the position is, in many instances, less than the minimum wage. Statewide professional standards should be established, an orientation toward working to meet the needs of the child should be incorporated, funds at the State level should be appropriated, and the ratio of attendance counselors should be defined not to exceed one attendance counselor for every 5,000 students. House Bill 981 was introduced in the 1977 Session of the General Assembly of North Carolina to provide minimum standards, set counselor/student ratio and set uniform salary ranges; however, that bill was delayed indefinitely.

The State, through our schools, must strive to use every resource available to assure that each child receives the quality education and social interaction which prepare him for responsible adulthood.

7. The Committee recommends that the Department of Public Instruction incorporate into its junior high curriculum instruction on the law as it relates to juveniles.

Juvenile justice instruction was a recommendation heard at many of the public hearings conducted by Secretary J. Phil Carlton of the Department of Crime Control and Public Safety. In a section of this report concerning "Coordination of Services," the Juvenile Code Revision Committee recommends the establishment of an interagency task force or council in each county where a task force is not already active. Immediately following formation, that council should work with the principals of local junior and senior high schools to integrate a program on juvenile rights and services available to the juvenile within the community. At public hearings across the state, numerous juvenile justice officials offered their services in coordinating with the school system to plan and implement such a program.

Governor Hunt closed his remarks to the Governor's Conference on the Role of the Schools by observing that "this State will never be what it can be, this Nation will never be what it ought to be till we have every person to make it the best. We need to help those young people, not simply to build themselves, but so they can help us build our communities our State, and our Nation."³ The Committee recognizes that money spent for education, particularly education of troubled children, may eventually save the State thousands of dollars in reduced welfare costs, reduced judicial costs, and reduced prison populations. Our schools must meet the challenge.

Footnotes

1. Proceedings Report - The Governors Conference on the Role of the Schools in Dealing with Status Offenders and Delinquency Prevention, 1978, p.5.

2. Op. Cit., p. 9.

3. Op. Cit., p. 12.

ABUSE AND NEGLECT

The Juvenile Code Revision Committee recognizes that the timely and proper handling of complaints of abuse and neglect can have a significant impact on our system of justice and society as a whole. It is apparent that these conditions tend to spread and grow if not given corrective attention. Delinquent and undisciplined behavior frequently results from family problems, including abuse and neglect. In addition, many parents who exhibit abusive behavior toward their children were themselves the victims of such actions as children. Hence, untreated abusive conduct may become self-perpetuating.

Realizing, therefore, that every complaint alleging conditions which would involve the jurisdiction of the juvenile court requires immediate professional attention, the Juvenile Code Revision Committee originally proposed that the intake counselor in the Chief Court Counselor's office screen all complaints: those alleging abuse, neglect, or dependence as well as undisciplined and delinquent acts. The Committee emphasized that this would not only assure immediate action when it is warranted, but would also screen out frivolous or malicious complaints saving the court's time for those cases which seriously require the court's attention.

The Committee concluded that rapid assistance to children in jeopardy and sound judicial administration require that all complaints undergo an initial screening process. However, at public hearings in July of 1978, the Committee heard many

presentees express concern about establishing the intake counselor as the single portal of entry for the juvenile court. The most convincing argument presented in opposition was that protective services workers from the county Departments of Social Services are professionally trained and better equipped to evaluate complaints involving abuse, neglect, or dependence than court counselors. Further, since it has always been the Committee's intention that protective services workers would continue to investigate allegations of this nature, many presentees insisted that screening by intake would require additional time to respond to a situation which may require immediate action.

1. The Committee recommends that all complaints alleging abuse, neglect, or dependency be referred to the Director of the county Department of Social Services for preliminary screening by that agency.

Under this proposal, all complaints of abuse, neglect, or dependence would be screened by protective services workers. To assure that every complaint receives proper consideration, the Committee is proposing review procedures for cases in which a petition is not filed, identical to those proposed for the intake process. As set out, a complainant must be notified if a petition is not filed and he may appeal that decision to the prosecutor's office. This will assure that a complainant, who is aware of a case needing judicial attention, will have recourse should the Department of Social Services take no action. Many presentees to the Committee expressed concern that too often the decision to refer a case to court is based on whether a

placement is available. The Committee was informed of one case involving some three reports to Social Services of abuse of a particular child, with no action being taken. The complainant contacted other agencies but was told the county Department of Social Services had final authority. The fourth report was made; the child had died, according to the information received. While providing the complainant with a means of obtaining protection and services for the child, the review procedure preserves the impartiality of the court by not requiring the judge to hear evidence prior to the hearing.

The Committee is also concerned that there are frequent cases of abuse and neglect which are so serious that immediate steps are required to protect the health or life of a child.

2. The Committee recommends that a law enforcement officer or protective services worker be empowered to take a juvenile into temporary custody without a court order if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order.

This proposal would expand the current authority of a protective services worker. Under present law, a child can be taken into immediate custody only after a court order is issued. In many cases, the time involved in obtaining the court order could mean the difference between life and death for a child.

Some speakers at public hearings across the State were concerned for the physical safety of protective services worker who might attempt to take a child into temporary custody over the objection of a hostile parent. The Committee, first of

all, has proposed this authority as discretionary and is not encouraging a protective services worker to put his safety in jeopardy. However, the Committee has also given this authority to law enforcement officers; and it is hoped that Social Services and law enforcement will work together to assure the safety of a child in danger as well as the personal safety of those attempting to assist the child.

The Committee also proposes that the Director of the county Department of Social Services, or personnel designated by the Director, notify local law enforcement authorities whenever a report of child abuse is received. The Committee strongly emphasizes that in a child abuse situation, the safety of the child should take precedence, and actions by Social Services to that end should constitute the initial response; however, the Committee also firmly believes that in some situations, abusive parents should be prosecuted. That course of action necessitates the early involvement of law enforcement. Timely notification of law enforcement by the Department of Social Services could have a number of beneficial aspects. A law enforcement officer could accompany a protective services worker in investigating a report of abuse for the protection of the worker in his attempts to assist the child. The law enforcement officer could also be on the scene immediately and could therefore gather evidence while it is still fresh to substantiate the findings of the protective services worker or to assist the District Attorney's office if criminal prosecution of the parents is warranted. Finally,

cooperation between law enforcement and Social Services should promote interagency communication which is vital to effective service to the juveniles of this State.

Other Recommendations

(3) In addressing the problem of child abuse and neglect, the Department of Human Resources should establish standards to deal with identification, prevention, treatment, and intervention. These standards should be mandatory for every county. Further, the Department should serve to advise and advocate programs and policies to alleviate family stress, address family violence, and better serve the needs of battered children.

(4) The North Carolina Department of Public Instruction should establish mandatory classes in parenting skills.

(5) In order to ensure the availability of emergency services for the protection of children, the State should mandate that by July 1, 1980, the local Departments of Social Services throughout the State shall develop and implement plans which provide for the twenty-four hour availability of services to families in stress.

(6) The Committee, in statutory provisions, is recommending the expansion of the requirement that abuse and neglect be reported, to cases of dependency as well. Further the mandate for reporting to the county Department of Social Services is broadened to include all persons who suspect that such conditions exist. The Committee consi-

dered a penalty for not reporting abuse, neglect, or dependency to insure that the administrators of hospitals, schools, and other institutions whose employees may see evidence of abuse, neglect, or dependence develop a mechanism for reporting and encourage their employees to report such incidents as required by law. The Committee, however, concluded that the threat of civil suit for failure to report should be sufficient incentive for institutions to encourage reporting.

COORDINATION OF JUVENILE JUSTICE SERVICES

The North Carolina Bar Association Penal System Study Committee concluded in 1972: "Organization and coordination must be brought to a system which has grown disorganized and uncoordinated. We must establish a continuity of care that begins when a child is arrested and continues through and beyond his incarceration until all reasonable steps have been taken to assure his rehabilitation."¹

Since that time a number of agencies have been involved in reorganizations and personnel changes; yet the need for coordination still persists. In 1976, then Lieutenant Governor Jim Hunt pointed out, "...One of the problems with our criminal justice system is that elements of the system are fragmented among the legislative, executive, and judicial branches of state government."² He characterized the juvenile justice system as "an area which, more than any other, dramatizes the fragmentation among and within the branches of state government. It is an area which most of us have unfortunately neglected for too long because we have known too little about the magnitude of the problem."³

With its inception in April 1977, the Juvenile Code Revision Committee spent approximately 18 months reviewing the performance of the North Carolina juvenile justice system and the utility of the legal foundation on which it is based. The legislation creating the Juvenile Code Revision Committee

mandated not only a study of juvenile laws but also a study of existing services, agencies, and commissions with recommendations as to whether they should be continued, abolished, or merged.

The Single Agency Concept

1. The Juvenile Code Revision Committee recommends that the functions of intake, probation, and aftercare, currently under the Juvenile Services Division of the Administrative Office of the Courts; administration of the Interstate Compact, currently in the Division of Social Services, Department of Human Resources; and training schools, detention services, and community-based services, currently under the Division of Youth Services, Department of Human Resources, be unified in a single administrative entity called the Office of Juvenile Justice.

The creation of the Office of Juvenile Justice will bring together functions now located in the Administrative Office of the Courts and the Department of Human Resources without requiring an increase in the present budget requests for these agencies and requiring no increase or decrease in number of staff positions or in present agency functions. The principle objective of this reorganization is to integrate juvenile services in North Carolina into an accountable, consistent, child-oriented system while increasing current effectiveness of its component agencies.

The creation of the Office of Juvenile Justice has been proposed as a response to a number of problem areas identified in the current delivery of juvenile services in North Carolina. These problem areas were systematically identified throughout eighteen months of study and testimony from public hearings

by the Juvenile Code Revision Committee. Among the problem areas identified were:

- The juvenile justice system is disorganized, lacking in coordination and a systematic approach to service delivery;
- There is a lack of a common, consistent set of treatment policies throughout the system. The policies under which juveniles are processed often vary from one court counselor's office to another or from one training school to another;
- The juvenile may cross a number of administrative lines as he progresses through the juvenile justice system. There is a lack of communication between those components concerning the juvenile's treatment needs;
- Policies and system priorities are set by different administrative agencies, each responding to a different set of constraints placed on them by federal, state, and local guidelines regarding the expenditure of funds for the care and treatment of juveniles;
- It is difficult for agencies and individuals outside the juvenile justice system to find a visible and appropriate agency on which to focus their concerns with the system's policies or operations;
- Currently juvenile justice cannot be managed as it should be. Agencies are not held accountable for their policies or operations which affect the system

as a whole or specific components within the system.

In areas of the system where the authority or responsibilities of two agencies meet, the accountability is vague and juveniles are often lost in this administrative vacuum; and

- The separate agencies which compose the juvenile justice system do not coordinate their planning activities, projections of future workloads, budgeting activities, and legislative requests. Therefore, conflicting priorities and legislative requests are presented to the State legislature from a number of sources. This makes it difficult for the legislature to deal with and focus on the problems and needs of the juvenile justice system in a rational manner.

As the problems listed indicate, there are a number of areas of communication and coordination, and subsequently service delivery, among what are now separate agencies which would be dramatically improved by inclusion in an Office of Juvenile Justice. These areas are primarily those in which one component of the system tends to influence the workload of another or in which the child, or information concerning the child, needs to progress smoothly from one part of the juvenile justice system to another. Several of the more important areas of critical interaction are:

Intake/Detention: Intake plays a major role in determining the detention workload through its detention policies, its ability to find alternative placements for juveniles which

do not necessarily require secure detention, and its relative ability to assist juvenile courts in the expeditious processing of juvenile cases. These two components of the juvenile justice system are highly interrelated and yet, are administratively separate under the current system.

Intake/Community-Based Programs: An essential element in the cost-effective operation of the juvenile justice system is the ability of intake counselors to divert appropriate juveniles from formal handling and, therefore, further contact with the system. A critical element in achieving this objective is the development of appropriate community-based resources designed to serve diverted juveniles in their home communities. If appropriate resources are to be developed and effectively employed, a strong, accountable relationship must exist between intake, probation, the local community-based services providers and the community-based alternatives program at the State level. Intake should provide an on-going needs assessment mechanism for community-based alternatives and should be kept constantly aware of available community resources. If the community-based alternatives program is to achieve its objective of reducing the number of juveniles treated outside their home communities, juveniles diverted at intake should form the bulk of admissions to community-based programs (particularly community-based residential programs). These components are currently administratively separate.

Training Schools/Aftercare: Juveniles returning to their home communities on conditional release from training schools are at a critical stage in their treatment process. These juvenile are under the supervision of a court counselor and have passed from one treatment program to another, from one administrative unit to another. It is essential that these juveniles stay within a common treatment framework as they move from training schools to aftercare. It is also essential that the juvenile's prospective aftercare counselor be involved in all aspects of the training schools' pre-release planning for the juvenile. This is difficult under the current structure of differing administrative structures which lack a mechanism to enforce accountability for the juvenile's smooth transition from training school supervision to community supervision.

The integration of the components of the juvenile justice system under the Office of Juvenile Justice would provide a number of administrative and programmatic benefits. Among these are the following:

- The development and implementation of a consistent, systemwide approach to the delivery of treatment services;
- The development of a systemwide approach designed to encourage the increased utilization of volunteer resources while insuring their effective recruitment, screening, training, and utilization;

- The more efficient utilization of scarce staff development and training resources;
- The coordination of technical assistance efforts throughout the juvenile justice system;
- The implementation of a centralized budget development process for the major components of the juvenile justice system, together with the development of standardized workload formulas as a means of documenting need in program areas. The legislature would be able to review a single budget that would reflect the needs of the system;
- The implementation of a statewide program monitoring system with the capability of monitoring program performance at all major decision points within the juvenile justice system. This monitoring system would be tied in to an administrative structure capable of responding to problem areas throughout the entire system;
- The development of consistent, statewide policy and operational manuals for all components within the system. This would insure a consistency of program operation that is lacking in the current system while providing program policies and operational standards against which program performance would be monitored; and
- The creation of a single, visible focus for community involvement, participation and input into the juvenile justice system.

Perhaps most frustrating to the Juvenile Code Revision Committee in its study has been the complete void in statistical information on components of the juvenile justice system. There is a need for statistical data as a tool for evaluation. The collection of this kind of data would go beyond a mere compilation of kinds of juvenile offenses and arrests. A statistical reporting system should provide more specific data relating to impact of different juvenile programs on specific clientele groups. Also a system such as this could provide system teaching data and indicate possible areas where there is a breakdown in the workings of the system.

2. The Committee recommends that there be established a Juvenile Justice Information System in order to gather data needed to evaluate program effectiveness and to plan programs in areas where needs are not being adequately met.

The North Carolina Bar Association's Penal System Study Committee in 1972 cited the lack of information reflecting either the number or the percentage of juveniles who "graduate" to the adult correctional system.⁴ The Governor's Advisory Committee on Youth Development in 1973 recommended an office of research and planning which would include statistical reporting and suggested that any new corrections programs established for juveniles include "a research and evaluation component built into them from the beginning."⁵

In order to maximize the use of the information system, it requires an organizational framework in which to operate. The adult system is coordinated among state and local law enforce-

ment systems, courts and corrections. Coordination and effective data interchange is sometimes difficult under this arrangement. Ideally, the juvenile information system would be the most effective under an Office of Juvenile Justice. The Office should collect, evaluate, and assist local communities to collect and evaluate, statistics, information, and data, the maintenance of which should be coordinated with:

- The design and implementation of a systemwide management information and program evaluation system designed to provide program managers with on-going information on program effectiveness;
- The development at the State level of an up-to-date bank of available community treatment resources, together with the provision of central placement assistance to local areas in identifying appropriate treatment resources for more difficult cases.

The proposed organizational structure of the Office of Juvenile Justice is designed to provide the coordination which is essential to effective service delivery while preserving the identity of its component elements. The existing complex system for providing services would be simplified to a one agency to one juvenile relationship. Clients needing services would have one agency to contact, and the Office would not need to cross bureaucratic lines to provide services except at the community level. The Office would administer the provision of or funding of the majority of services itself. Those services not directly

administered by the Office would be available to clients on a contract or referral basis through a set of official linkages established between the Office and other service providers (private and public).

The functional structure of the new office must not permit it to become simply an umbrella name for the same old bureaucracy and fragmented system of services that now exists. Rather, the structure must promote integration. It must have built-in coordination and accountability mechanisms, and the flexibility to accommodate changing needs. The single focus will be the juvenile rather than interagency passing the buck.

3. The Committee recommends the hiring of persons for state administrative positions from those professionals with field experience.

A single agency should establish a mechanism for recognizing outstanding achievements and should provide opportunities for employees to broaden their knowledge and skills through a variety of job assignments, job enrichment, and job rotation.

Both interagency promotion and training that is across disciplinary lines should alleviate the frustration field personnel have related when an administrative person with no field experience does not grasp the workings of the local agencies or in fact does not realize what the law is with regard to juveniles since he does not come into contact with it every day.

4. The Juvenile Code Revision Committee recommends that the Office of Juvenile Justice be placed under the Chief Justice of the Supreme Court as an independent office of equal stature with the Administrative Office of the Courts. The administrator for this new office would be appointed by the Chief Justice of the Supreme Court or by an Associate Justice designated by the Chief Justice.

When the court system was finally decided upon as the best alternative, the wisdom of removing all components of the juvenile justice system from the direct administrative control of the Governor was questioned. However, the Committee feels that this decision represents the most positive alternative in that it offers the potential for administrative consistency that has not been present in the recent history of Youth Services in North Carolina. For example, the Division of Youth Services has had five directors in the past four years. This constant turnover in leadership within the Division has resulted in an inability to implement a consistent policy of care and treatment for the juveniles in its charge. To a large extent, administrative turmoil has resulted from the changes in political administrations and atmospheres within the State. The placement of the Office of Juvenile Justice within the Judicial Department would serve to buffer the juvenile justice system from the adverse impacts of changes in political administrations and give it the potential for stability it desperately needs.

Several questions regarding the placement of the Office under the Judicial Department have been raised. Initially, three possibilities for the location of a single agency were considered by the Juvenile Code Revision Committee. The first was the possibility of creating a cabinet-level entity reporting

directly to the Governor.⁶ The problem with this possibility was that in light of recent State government reorganization, it seemed highly unlikely that either the Governor or the legislature would support such a suggestion. The second proposal was pulling all services together under the Department of Human Resources, and the third was to unite services under the Judicial Department.

Another concern is that such placement takes the system away from the Department of Human Resources which presently is responsible for the delivery of most human services and places it under the court system which usually doesn't have service delivery components. Juvenile justice is a special area in this regard. Several court systems in the United States have intake, detention, and probation services for their juvenile justice systems directly under the control of their state court systems.⁷ More importantly, however, North Carolina already has a tradition of the delivery of "human services" within the court system, in that the Administrative Office of the Court's Juvenile Services Division is currently delivering intake, probation, and after-care with professional counseling services on a statewide basis.

Testimony indicates that the Department of Human Resources, acting as a human services umbrella agency, has established an inconsistent record of service coordination for North Carolina juveniles in trouble with the law. For example, it has been difficult for juveniles served by the Division of Youth Services to obtain needed services (i.e. services for mentally retarded

and emotionally disturbed delinquents) from its sister agencies within the Department of Human Resources. Witnesses told the Juvenile Code Revision Committee that Title XX monies, earmarked and labeled "Delinquency Prevention" and dispersed to North Carolina's 100 counties through the Division of Social Services, rarely were used for that specific purpose at the local level. Providing the Office of Juvenile Justice with an independent status places it in a stronger position to bargain effectively for needed services from the Department of Human Resources and provides it with an independent position from which to point out inconsistencies.

The most significant reasons for moving components of the juvenile system from the Department of Human Resources and from the Administrative Office of the Courts to an independent unified position are increased visibility and legislative fiscal accountability. At the Department of Human Resources and at the Administrative Office of the Courts, juvenile justice is just one of many priorities considered during the preparation of the total departmental budgets. The creation of a highly visible and independent Office of Juvenile Justice would insure that the needs of North Carolina's troubled juveniles are no longer forced to compete for funding as a small entity and usually unchampioned cause within massive and diverse departments. These needs would be presented to the legislature in a clear and coherent manner by an Office able to speak for the problems and needs of the North Carolina juvenile justice system. That Office would focus on setting priorities for a

unified, coordinated approach to the problem of juvenile delinquency in North Carolina.

Some concern has been voiced that with a move to the Judicial Department, total control for screening, diversion, investigation, adjudication, and treatment of the troubled juvenile would rest in the hands of elected district court judges, many of whom know little of juvenile law. Under the proposed administrative structure, juvenile court judges would have no more control of the operation of the juvenile justice system than is currently mandated by North Carolina statute. The Juvenile Code Revision Committee feels that increasing visibility and the importance of the juvenile justice system by placing the Office under the Judicial Department might serve to attract more interested, qualified, individuals to act as judges in juvenile proceedings. This would bring about an increased consistency in the operation of juvenile courts. Juvenile court judges would still operate with the assistance of the Administrative Office of the Courts while services administered by the Office of Juvenile Justice would be placed as a separate co-equal administrative function. This would offer the opportunity for increased cooperation between juvenile court judges and administrators of the juvenile justice system. The arrangement should under no circumstances represent a threat to the administrative discretion of the Office of Juvenile Justice. In fact, the proposed new law removes the Chief District Court Judge from participation in the appointment of the Chief Court Counselor and thereby

removes from the district court judges all statutory grounds for influencing decision-making within the court counselor's office.

The creation of the Office of Juvenile Justice may well be viewed as a culmination in a series of changes which has taken place in the juvenile justice system in recent years. Resistance to change may be anticipated, especially when the territorial sovereignty of departments is threatened. Thus, the success of any change hinges on careful planning and education. Without question, the upheaval engendered by such statutory changes will be significant. These will include:

- Movement of personnel both physically and functionally;
- Transferral of lines of authority and operation;
- Integration of previously autonomous functions;
- Coordination of centralized financial and personnel management, as well as centralized program planning and development;

but the Governor's Juvenile Code Revision Committee believes that these short term problems of adjustment will be far overshadowed by the ability for coordination of services to the troubled juveniles of North Carolina.

Services at the Local Level

Testimony before the Juvenile Code Revision Committee revealed frequent conflicts and misunderstandings among the agencies serving juveniles at the local level. For example, school officials feel that they are not being supported when

they refer a truant to court only to find that the juvenile has been diverted from court at intake. In many instances there is a question as to whether court counselors or protective services workers should take responsibility for a juvenile who has been referred to the court and who could be classified as neglected, undisciplined, or delinquent. Court officials cannot understand why local mental health cannot see a child for psychological evaluation without the delay being currently encountered. Often public schools, county departments of social services, court counselor programs, and private delinquency prevention agencies including group homes hire professionals and establish entire treatment programs within their separate organizations. Presentees before the Committee also revealed indications that a child can be receiving services from as many as five or six agencies at the same time.

In addressing the problems alluded to at the local level, the Committee suggests utilization of a coordinating group perhaps led by the Chief Court Counselor in each district.

5. The Committee recommends that an interagency task force be utilized in each county to offer assistance to the court in juvenile proceedings to determine the most appropriate disposition of matters before the court and to promote coordination and an exchange of information among child serving organizations at the local level. The Chief Court Counselor of each district should assume the lead in maximizing utilization of existing task forces. Participation should include at the very minimum representatives from the following agencies: Court counselors, Department of Social Services, school attendance counselor, school social worker where one exists, Sheriff's Department, Police Department, group homes where in existence, mental health, vocational rehabilitation, and one or more private citizens.

A number of presentees to the Committee recommended the establishment of a coordinating agency at the local level. Several cited Chief District Court Judge Gilbert H. Burnette's utilization of an evaluation team as a model as to coordination of services and maximum use of resources.

The program developed by Judge Burnette in New Hanover County utilizes the facility and staff of the local detention center and is a post jurisdictional, predispositional program for first offenders. All recidivists are subsequently reviewed by the same group so that the majority of dispositions for adjudicated undisciplined or delinquent juveniles are based on the Evaluation Committee's input and report. The process has several components:

School Information: Each juvenile's school is contacted (if written parental consent to do so has been given) and a performance and behavior abstract is completed on a special form. The information includes items such as grades, intelligence, and achievement tests scores, attendance, social and personal assets, general behavior, and specific problems and/or recommendations. This covers all school years, if the information is available.

Social History Interview: This is perhaps the most important part of the evaluation process and involves an interview with the juvenile and parents and the development of a report on his social circumstances. This is an opportunity for the parent and social worker to re-

view the current situation and gives the parents an opportunity to express themselves in a personal setting. Areas covered include the current offense, past behavior, school information, physical and mental health, associates and friends, recreation and/or spare-time activities, drug or alcohol involvement, attitude of the juvenile, family background, and relationships with all family members. Comments of the interviewer concerning his impressions are optional.

Psychological Testing: The evaluation is a screening device used to determine the main area of a juvenile's behavioral conflict. If clinical warnings are found, clinical testing can be obtained through the Southeastern Mental Health Center or on a private contract basis. Psychiatric consultation is provided when warranted by the Mental Health Center.

Agency Reports: Each agency within the community which has had or may have future contacts with the juvenile is contacted. The majority of these organizations are members of the Evaluation Committee. Pertinent information is obtained and shared with the committee and included in the report to the court.

At a weekly meeting of the group the information is reviewed and a community intervention recommendation is made. If the recommendation is unanimous, it is so stated. If there is a dissenting opinion, the minority recommendation is included. One purpose of the evaluation is to provide the agencies with

appropriate referrals. The primary service agency is determined and copies of the evaluation are made available. The recommendation is sent to the court in the form of a "Report to the Court." Judge Burnette, in his discussions with the Juvenile Code Revision Committee, stated that he followed the Evaluation Committee's recommendations in almost every case.

If a juvenile is returned to court for further violations, the case is referred back to the committee for a review. In this manner, the committee enters a recommendation on virtually all offenses. This recommendation is sent to the court in the form of a "Note to the Court."

This program has been reviewed in some detail as an illustration of a successful ongoing program. This concept could be modified to address the particular needs of a given area. Some jurisdictions may wish to expand the function to serve neglected, dependent, and abused children. Local communities could use this opportunity to exchange information and to open lines of communication both among agencies and between child serving agencies and citizens concerned about children.

Footnotes

1. North Carolina Bar Association Penal System Study Committee, As The Twig is Bent, 1972, p. 23.

2. Jim Hunt, Helping Children In Trouble With the Law: A Position Statement, August, 1976, p. 1.

3. Ibid.

4. North Carolina Bar Association Penal System Study Committee, As The Twig is Bent, 1972, p. 16.

5. Report of the Governor's Advisory Committee on Youth Development, January, 1973, p. 18.

6. The IJA/ABA Standards, Organizational Structure of Courts of Juvenile Jurisdiction recommend that intake, probation, and detention services be administered by the executive branch of government (See Standard 1.2.).

7. See Michigan, Georgia, California, Oregon, and Virginia. The Committee recognizes the fact that some of the states mentioned have courts that are county administered.

INTAKE: SCREENING OF DELINQUENT AND UNDISCIPLINED COMPLAINTS

Screening and evaluation services may be the most important phase of the juvenile justice system. Broad statements in the present law reflect the basic philosophy of intake. The determination of "whether it is in the best interest of the child or the State that a juvenile petition be filed" as set out in G.S. § 7A-289.7 is the primary responsibility now delegated to the intake counselor.

Present North Carolina law requires that before any judicial action is taken, all complaints in delinquent and undisciplined cases must be considered by an intake counselor where intake services have been established.

The Juvenile Code Revision Committee recognizes the significant function being performed by intake counselors in determining whether to divert a child from the juvenile court. Diversion is an ambiguous term used to describe a range of practices. The creation of the juvenile court system itself exemplifies one concept of diversion in that it was established to divert juvenile offenders from the adult criminal justice system. Another concept of diversion is viewed in the operational definition found in the Report of the Corrections Task Force of the National Commission on Criminal Justice Standards and Goals:

Diversion refers to formally acknowledged...efforts to utilize alternatives to...the justice system. To

qualify as diversion, such efforts must be undertaken prior to adjudication.... Diversion implies halting or suspending formal criminal or juvenile justice proceedings against a person who has violated a statute in favor of processing through a noncriminal disposition.¹

That definition is also accepted and utilized by the IJA-ABA Joint Commission on Juvenile Justice Standards.² Procedures to avoid the court process altogether may also be termed diversion. Diversion to community alternatives is widely recognized as preventing the stigmatization and labeling of a juvenile that may result from his appearing in court and acquiring a juvenile record. Extending the intent embodied in G.S. § 7A-277 to assure utilization of community resources by the courts, the Committee encourages the utilization of community resources by the intake counselor. This is especially true in those cases wherein a juvenile is alleged to be undisciplined. The intake counselor who receives complaints with regard to undisciplined children should primarily refer those children and their parents to appropriate community resources. A petition should not be issued in most of those cases. From January until June, 1977, 42% of the total number of complaints across the state were for behavior which would be classified as undisciplined behavior. Petitions were filed in 46.74% of the cases. This would mean some 1,976 petitions out of a total of 5,521

petitions filed during the first 6 months of 1977 were for undisciplined behavior.

The Juvenile Code Revision Committee observed that intake services have now been established in all judicial districts; however, presentees to the Committee pointed out the need for some uniformity in service delivery for successful administration of the system statewide. One of the primary sources of the lack of conformity in the intake services offered throughout the State was the absence of clear, definite criteria for determining which cases would be diverted. There may be, for example, an implicit rule in some districts that cases involving second offenders or felonious charges are never to be considered for diversion whereas in other districts, those cases may be considered proper for diversion.

1. The Committee recommends automatic referral to court where certain felony offenses are alleged.

Although many of the serious felonies are not being diverted, the Committee suggests that the discretion be limited where a few specific offenses are concerned. This action addresses the desire expressed by law enforcement as well as other persons using the services of the court that there be safeguards included in the discretionary powers of the intake counselor where the charges involve the most serious felonies.

Detailed criteria are not provided in the present law, which admonishes the intake counselor to determine whether it is in "the best interest of the child or the State" that a petition be filed.

2. The Committee recommends that criteria to be considered by the intake counselor in making his decision as to whether a petition should be filed be established and published by the Office of Juvenile Justice.

The Committee makes the following suggestions, many of which are adopted from the North Carolina Rules of Procedure Applicable to Children in District Court, as inclusions in the criteria to be established for offenses other than those classified as nondivertable:

- The intake counselor should weigh the views of the complainant respecting the need for court action, but should not allow such consideration to be the controlling factor in making a determination.
- Denial of the allegations of the complainant shall not be regarded as alone sufficient to justify a determination that a petition should be filed.
- The making of restitution shall not be a condition on which an evaluation and determination as to whether a petition should be filed shall be made.
- The intake counselor should determine that it is in the best interest of the juvenile or the State that a petition be filed when satisfied that the complaint states the commission of a felony by a juvenile over fourteen years of age; or that the complaint states behavior which constitutes a violation of probation or conditional release previously ordered and currently in effect; or that

it has been determined that on one or more previous occasions that a complaint involving that juvenile has been referred to community resources.

- The intake counselor should determine that it is in the best interest of the juvenile and the State that a petition not be filed when satisfied that the complaint states delinquent behavior of a minor nature by a juvenile against whom no prior complaint has been made and there are indications that the child and his parents are willing and able to correct his behavior or that they will seek the aid of an available community resource which is likely to be able to effect the needed correction; or that the complaint states delinquent conduct by a juvenile against whom no prior complaints of delinquency have been made and there are indications that the juvenile acted in ignorance of the law and is aware of his accountability for lawful behavior; or that a complaint of delinquent behavior of a minor nature is made against a juvenile because of the failure or refusal of adults to resolve differences among themselves or their children; or because of the failure or refusal of the juvenile's parents to pay claims for damages and there are indications that such differences have been or may be resolved other than through court action.

Establishing intake guidelines will insure a more equal justice for juveniles in North Carolina. While all of the rights afforded adults in the criminal justice system have not been afforded juveniles in juvenile court proceedings, it is recognized that the proceedings are becoming more formal and less discretionary. Scholars argue that In re Gault and In re Winship clearly establish the principle that informal diversion systems must operate under procedural safeguards.³

Consideration was given to the argument that procedural due process should be afforded the juvenile to the extent that a formal system of diversion should be developed with the juvenile being advised of his rights at the intake stage. That argument was rejected.

3. The Committee recommends that the intake counselor perform no adversarial functions and that any information gathered by the intake counselor would be privileged until after adjudication.

Since information gathered by the intake counselor during the screening and evaluation process would not be available to anyone until after adjudication, it was not deemed necessary to advise the juvenile of his right to an attorney as part of the screening and evaluation process.

The value of procedural safeguards is directly related to the quality of personnel administering the services. It is imperative that the intake counselor be sensitive both to the needs of the juvenile as an individual and to the importance of procedural regularity.

4. The Committee recommends that the qualifications for the intake counselor include a minimum of a four year college degree in psychology, sociology, criminology or other related field and two years experience in juvenile probation, juvenile social work, or juvenile law enforcement.

The hiring of individuals with higher academic qualifications and more experience working with juveniles in trouble should be encouraged. There should be established periodic training sessions for individuals involved in screening and evaluation as well as an intense orientation program prior to assuming responsibilities. Equally significant to the quality of personnel administering intake services is the assurance that such services are easily accessible.

5. The Committee recommends intake services be available 7 days a week and 24 hours a day.

Insuring coverage around the clock will require some delegation of responsibility but with increased training, delegation should not diminish the quality of service and should provide a better system of justice for juveniles in North Carolina.

Footnotes

1. National Commission on Criminal Justice Standards and Goals, "Corrections Task Force Report" 50 (1973).
2. Institute of Judicial Administration/American Bar Association, "Juvenile Justice Standards Project," Standards Relating to Youth Service Agencies, 5, (1977).
3. In re Gault, 387 U.S. 1, (1967); In re Winship, 397 U.S. 358, (1970).

IMMEDIATE CUSTODY AND DETENTION

Immediate custody and detention are the mechanisms by which police, social service personnel and intake counselors can hold a child alleged to be delinquent, undisciplined, abused, neglected or dependent until there can be a hearing and disposition in the juvenile court. Immediate custody is placement of a child in nonsecure facilities for his own protection and well being. Detention is placement of an alleged delinquent or undisciplined youth in a secure facility.

1. The Committee recommends that the Chief District Court Judge be empowered to delegate his authority to issue secure and nonsecure custody orders. That delegation should be limited to any district court judge, intake counselors, and members of the Chief Court Counselor's staff.¹

Current law allows the Chief District Judge to delegate his authority in this regard. This recommendation, however, more strictly limits the officials who may be empowered to authorize secure or nonsecure custody. This should address the concern expressed by some presentees to the Juvenile Code Revision Committee that only professionals trained in the area of juvenile justice should be included in the officials to whom the court's authority may be delegated. At the same time, this provision should assure that someone is available to authorize custody twenty-four hours a day.

2. The Committee recommends that specific criteria must be met before an order for continued custody may be entered.

In addition to observing that a large number of juveniles seem to have been detained unnecessarily and that too many juveniles are being held in jails, the Juvenile Code Revision Committee noted that the percentage of juveniles being placed in secure custody varies widely. Current law providing that the decision to detain must be for the "protection of the community or in the best interest of the child"² was considered to be too broad by the Committee. In establishing criteria to assist the judge in determining whether to authorize secure custody, the Committee reflects its view that detention is justified only to assure the juvenile's appearance in court, to protect the community, or to protect the juvenile from physically injuring himself. Present law also provides that an immediate custody order may be issued when a child is "in danger or subject to such serious neglect as may endanger his health or morals, or that the best interest of the child requires" it.³ Criteria recommended by the Committee to assist the judge in making a decision for nonsecure custody include abandonment, physical injury, sexual abuse, and need for medical treatment.

In addition, the Committee has established conditions of release which allow the judge to conditionally release a juvenile with restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's

presence in court; however, the recommendation specifically states that the least necessary interference with the liberty of the juvenile which still assures his appearance should be utilized. Specific criteria are set out in the Proposed North Carolina Juvenile Code in Article 46, G.S. § 7A-539.

3. The Committee recommends that where the judge has delegated his authority to issue custody orders to the intake counselor or a member of the chief court counselor's staff, and that person has ordered placement in secure or nonsecure custody, a hearing to determine the need for continued custody shall be held on the day of the next regularly scheduled session of district court in the district but in no case later than five days.⁴

The requirement that the case be reviewed more quickly than the five days which would be required if the order were entered by a judge, serves as a check on the additional authority being exercised by someone other than a judge.

4. The Committee recommends that secure custody of an undisciplined child be limited to a maximum of 24 hours.⁵

Under the proposals of the Juvenile Code Revision Committee, detention of an undisciplined child would be limited to 24 hours in compliance with the Juvenile Justice and Delinquency Prevention Act. Detention of such a child should be discouraged and if placement is needed, the use of nonsecure facilities with counseling capabilities is suggested. Much concern was expressed at public hearings across the state with regard to limiting the detention of the undisciplined juvenile to 24 hours--especially as it relates to the runaway from out of the state whose return is handled through

the Interstate Compact. Although federal funding under the Juvenile Justice and Delinquency Prevention Act would be jeopardized if detention of status offenders were not limited, many argued that the safety of a number of children would be jeopardized if restrictions are imposed. Others asserted that status offenders should not be detained under any circumstances. Having considered all points of view, the Committee recommends that if federal regulations from the Office of Juvenile Justice and Delinquency Prevention change with respect to the 24 hour limitation that the limitation on detention of undisciplined juveniles be increased to 72 hours.

5. The Committee recommends state administration of detention services with regional facilities being located according to a plan that best matches factors such as need and distances involved for the courts and law enforcement personnel.⁶

The 1975 Session of the North Carolina General Assembly in G.S. § 134A-37 mandated the development of regional detention services by January 1, 1979. Yet, the same legislative session failed to appropriate any funds with which this plan could be implemented. At present North Carolina, some years later, has seven locally operated detention facilities and only one state funded and state operated detention home (See Appendix III). Some 4,002 juveniles were detained in detention homes in 1977 (See Appendix II).

After observing the lack of progress in fulfilling the mandate of the General Assembly as a result of nonexistent

funds, the Juvenile Code Revision Committee studied the various approaches of other states as well as those proposed by other study groups.

The feasibility of local administration of detention services was questioned, primarily because the need for secure custody in most of North Carolina's counties is not large enough to warrant a detention program that can provide the necessary staff supervision and specialized services (medical, education, recreation, etc.) except at exorbitant cost.

According to studies completed prior to enactment of the legislation providing for regional detention facilities, four more facilities are needed in addition to the Cumberland Detention Home. It is recommended by the Division of Youth Services that the counties of Washington, Edgecombe, Lenoir, and Caldwell be considered as locations and the Committee concurs in that recommendation.

6. The Committee recommends that no juvenile be detained in a holdover facility of a local jail after July 1, 1981.

The Committee has noted that detention conditions in North Carolina have improved in recent years. In 1972, the Jail and Detention Services contracted with the National Juvenile Detention Association to make an independent study of detention in North Carolina with recommendations for improvement. The results of this study were the basis for a Department of Human Resources revision of their "Minimum Standards for Juvenile Detention Facilities." The new standards, effective July 1,

1977, embody most of the changes advocated in the study and the Committee recognizes that the present detention standards are a giant step toward better justice and care for our juveniles. However, the Committee is concerned that too many juveniles are being detained in holdover facilities of local jails. The Committee therefore recommends that no juvenile be detained in a holdover facility of a local jail after July 1, 1981. Approximately 2,394 juveniles were detained in the 64 county jails that have holdover facilities during 1977 (See Appendix I). The majority of North Carolina jails were not constructed with special sections or accommodations for juveniles. In addition, the physical conditions of jails are reported to be poor. Few jails have made attempts to remodel or furnish juvenile cell blocks so that they are different physically from the adult sections in accordance with juvenile needs or reasons for holding. A frequent concern expressed by law enforcement officials is the isolation or solitary confinement of juveniles being held in jails. It is common for a juvenile to spend his detention in isolation, i.e. solitary confinement, whereas solitary confinement is the most severe of the acceptable forms of punishment for adult misconduct in county jails. Similarly, in adult prisons, isolation is the harshest penalty which can be administered. It is ironic then that adolescents are subject to deprivation of social contact when jailed, a circumstance which is used for punishment for sentenced adults.

Medical services, educational services, and recreation activities are virtually non-existent in jails. Detention alternatives must be developed for use in all judicial districts.

These alternatives should include the following:

- Home detention, which is intensive supervision of a child in his own home (in lieu of detention) by a home detention worker pending court disposition.
- Foster family emergency shelter care which could and should include volunteer as well as paid homes.
- Small group shelter care.

Footnotes

1. See G.S. § 7A-538 of the Proposed North Carolina Juvenile Code.

2. See North Carolina General Statute § 7A-286 (3).

3. See North Carolina General Statute § 7A-284.

4. See G.S. § 7A-542 of the Proposed North Carolina Juvenile Code.

5. See G.S. § 7A-539 of the Proposed North Carolina Juvenile Code.

6. Detention Planning, Children's Bureau, Washington, D.C.: U.S. Department of Health, Education and Welfare. (1960).

JUVENILE CORRECTIONS

The Juvenile Code Revision Committee realizes that the population of serious juvenile offenders within the training school system is growing due to the deinstitutionalization of status offenders, the utilization of existing resources, and the development of community alternatives.

Anticipating this change in population, the Juvenile Code Revision Committee has been studying the policies and system of treatment at the training schools and has determined that many of the policies currently being used seem to have been written in reaction to a crisis, with little planning and coordination.

1. The Committee recommends the administrative implementation of the following suggestions:

- (a) The authority for policy-making should be clearly defined and should rest with the central management.
- (b) Existing policy should be correlated.
- (c) An easily understandable policy format should be adopted.
- (d) Policies should be presented in this format in a systematic compilation.
- (e) Regular mechanisms should be established and adhered to for the presentation and review of this policy compilation for all training school staff.
- (f) Regular mechanisms for review of all policy by management should be established and adhered to yearly.

Existing policies seem to come from four main sources: Executive Directives, Division of Youth Services/Department of Correction Directives, Division of Youth Services/Department of Human Resources Directives, and Individual School Policies. The formats of these policies differ greatly. The policies are not found in one central place. It is not clear how much of the authority for policy making rests with the central management and how much of the authority rests with the individual training school director.

Existing individual policy statements often have good philosophy and intent. Many are excellent. They are not, however, presented in an organized form that can be easily understood and used by all staff persons. In addition, they are not a regular component of mandatory training within the Division of Youth Services.

2. The Committee recommends that there be developed and implemented a uniform intensive orientation program as well as in-service training programs for all training school professionals, particularly cottage parents. Further, the Committee recommends that each institution provide for greater interaction among training school psychologists, social workers and cottage parents.

The inadequate level of staff supervision is often alluded to in discussions analyzing the problems at the training schools. The murder of a cottage parent in August, 1978, at the Juvenile Evaluation Center by juveniles committed to the Division of Youth Services prompted the State to take a hard look at the training schools, both to review the staffing

within the facilities as well as the programs. In addressing the JEC incident and earlier incidents at Stonewall Jackson Training School, Governor Jim Hunt announced the removal of the employment requirement that cottage parents have two years of college; the creation of 54 new cottage parent positions; and the establishment of a third classification for cottage parents with a salary range from \$8,292 to \$11,232. The turnover of cottage parents is high. The beginning pay of the cottage parent, the person who is in the most direct, continuous contact with the juvenile, has been compared to that of a prison guard which was some \$1,500 higher prior to August, 1978. In 1973, the North Carolina Bar Association's Penal Study Committee stated: "An upward revision of pay schedules is essential to attract and retain qualified cottage parents. Their training program should be expanded and upgraded in order to have effective rehabilitation; and additional cottage parents are needed in order that 24 hour-a-day supervision can be given to the juveniles in training schools."¹ At that time there were approximately 45 cottage parents and some status offenders were still being committed to the training schools. The requirement of two years of college education for the supervisory responsibilities of cottage parents may have been to provide motivation for salaries to be increased as well as to provide some incentive for the training school to tap the resources of community colleges located in close proximity. Whatever the intent of the educational requirement,

neither of the two possibilities mentioned have been forthcoming. Certainly, an individual who is qualified and is sensitive to the needs of juveniles but is lacking two years of college education should not be precluded from consideration. Whatever the background and training of the person hired, the direct and continuous contact this person has with a juvenile who may be assaultive, verbally or physically abusive, or having difficulty adjusting to the structure of the program plan demands intensive orientation and in-service training including a full explanation of division policies.

3. The Committee recommends the development of a statewide treatment model including psychological, recreational, educational, and vocational components. A clearly defined, written set of expectations for improved behavior that parallels behaviors which society will expect of the offender when he is released should be instituted.

With the allocation by the Governor of 54 new positions to the Division of Youth Services, on paper there would seem to be enough professional staff to offer a sound treatment program for all students. Indeed, during 1977 there were approximately 514 treatment personnel at the five training schools. Compare that figure to the approximate 1700 students per year or approximately 700 students at any one given period of time. There are several basic reasons why present treatment at the state's training schools is less than effective. There is no statewide system of treatment in the state's training schools. The development of treatment programs is left up to each individual school. Most of the training schools have not developed

a consistent treatment policy within their individual school. A typical example is C. A. Dillon where treatment programs are left up to the various cottage life staff, who are the least equipped of all direct service providers to design and implement such programs. Programs are sometimes initiated by university interns coming into the school to do field placement and dropped when the intern leaves. There are no consistent, objective, clearly defined changes in a student's behavior that he knows are expected of him when he enters training school. Sometimes juveniles don't even know they are going to be released until the day before they are, and they certainly don't know why. They are confused. They don't know what, if anything, they did right in order to be released.

4. The Committee recommends that individual and group therapy be provided each child each week and be reflected in each child's individual treatment plan. The Committee recommends further that a copy of the treatment plan be provided to the committing court so that informed suggestions may be made by local professionals to the treatment team.

The utilization of a treatment team to design and implement a program directed toward individual needs is endorsed by the Committee; however, the team must meet on a regular basis, must be receptive to suggestions of other professionals working with the juvenile at the institution, and must have a clear line of communication with professionals in the juvenile's community who supervised him prior to commitment and who will supervise him on conditional release.²

5. The Committee recommends that educational, vocational, and recreational programs be improved and made an integral part of a uniform treatment system.

The need for the juvenile to develop useful skills while at the training school was stressed by presentees to the Committee. There should be a state level plan that provides for access to community facilities to address the need for the development of useful skills in demand by private enterprise.

6. The Committee recommends that there be instituted a level or phase system reflecting increased achievements and responsibilities with improved behavior. The Committee recommends further that the organization of the training schools be reviewed to provide adequate security for the changing population within the training schools.

The Juvenile Code Revision Committee heard many persons cite the need for more security at the training school. Community residents are feeling victimized and cries are loud for the protection of the staff and the juveniles themselves. Child-care institutions for licensing purposes must provide as a minimum a staff ratio of one staff person for every ten children. When one realizes that the juvenile in training school will be the more aggressive delinquents as community programs are fostered, one realized the need for more intensive supervision of juveniles in training school.

Historically, the juvenile court was considered a system of individualized justice that treated a child's "need" rather than his "deed." Whether a juvenile was adjudicated delinquent for burglary, arson, rape, or other less serious offenses, if he were committed to a training school, it was

for an indeterminate period of time for "rehabilitation."
He was to be treated, not punished.

The theory that the court should help the child became at times an excuse for ignoring due process. Youths adjudicated for less serious crimes could and were confined, in some instances, for longer periods of time than would have been possible under the adult system. This confinement often was the result of a proceeding where the juvenile was not offered representation of counsel and where rules of evidence were lax.

With decisions giving juveniles some due process rights,³ the United States Supreme Court signaled the move away from an emphasis on coercive treatment and rehabilitation toward an emphasis on consistency and fairness and rejection of the traditional way of treating juvenile offenders. There is recognition that there is a segment of the juvenile population that needs confinement for the protection of society. At the same time, allowance must be made and incentive provided for the juvenile to meet stated goals to move from a secure, somewhat spartan environment to a less restrictive residential setting. The two settings could be within the same institution or could be at different institutions specifically designated and designed for the program implemented.

7. The Committee recommends that isolation be strictly regulated and that as a minimum:

(a) When a juvenile is isolated because of conduct that creates a danger to self or others, the incident should be reported immediately to the program director and when necessary to the appropriate medical personnel. The case should be immediately reviewed, any required medical attention immediately undertaken, and a plan devised for the provision of care in a more appropriate setting.

(b) A juvenile should be isolated at his or her own request when such request arises out of a legitimate fear for his or her personal safety.

(c) When the isolation is an emergency measure growing out of violent behavior, a staff member should remain with the juvenile. If considerations of safety make it impossible for the staff member to remain, the staff member should maintain constant observation of the juvenile. When the juvenile is in isolation at his or her own request, the regular staff visits should be designed to clearly identify and quickly resolve the problem that led to the request for isolation. All juveniles in isolation should be visited at least hourly by a specially designated and trained staff person, and should be provided one hour of recreation in every twenty-four-hour period of isolation.

(d) Each incident of isolation, along with the reasons for and the resolution of the matter, should be recorded and subject to at least monthly review by the program director and an individual or individuals assigned such a review function in the office.

8. The Committee recommends that corporal punishment within the training school system be prohibited.⁴

Certainly, the problem of discipline is much broader than isolation and corporal punishment; however, the possible impact of isolation or corporal punishment if used abusively upon a juvenile demanded separate treatment. Regardless of the setting and program employed, the isolation of juveniles

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should be utilized only in accordance with the above as a temporary emergency measure when the juvenile is engaging in conduct that creates an imminent danger of physical harm to the juvenile or others and policy should be published in this regard.

Corporal punishment should be prohibited. Personnel should not be permitted to use physical force against juveniles or to allow juveniles to use physical force against other juveniles except as necessary in self-defense or to prevent imminent injury to the juvenile, another person, or substantial property injury, to prevent escape, or when a juvenile's refusal to obey an order seriously disrupts the functioning of the facility. No more force should be used than is necessary to achieve the legitimate purpose for which it is used. Any personnel using physical force against any juvenile should immediately file a written report with the Office setting forth the circumstances of the act, the degree of force used, and the reasons for the use of force.

Footnotes

1. As the Twig is Bent, A Report of the North Carolina Juvenile Corrections System. Prepared by the North Carolina Bar Association's Penal Study Committee (1972) p. 10.

2. See G.S. § 7A-584 of the Proposed North Carolina Juvenile Code.

3. See In re Gault, 387 U.S. 1 (1967); In re Winship, 397 U.S. 358 (1970); and Breed v. Jones, 421 U.S. 519 (1975).

4. Standards Relating to Corrections Administration. Institute of Judicial Administration/American Bar Association. Cambridge, Massachusetts: Ballinger Publishing Company (1977), Standard 4.8.

JURY TRIALS

Under current North Carolina law, the juvenile court relies heavily on the judge at every stage of the proceeding. As an attempt to preserve the due process rights of the juvenile at every stage of the proceedings, the Juvenile Code Revision Committee is proposing a number of statutory changes requiring greater involvement of the prosecutor in representing the State and an expansion in provisions for legal representation for the juvenile.

At the same time, the Committee has concluded that additional changes are necessary to insure a fair and impartial adjudication and a disposition which is appropriate to the factual situation. Some of the Committee's suggestions for change, however, have ramifications beyond the area of juvenile justice. In another proposal, the Committee has recommended that a Courts Commission be reestablished to consider the possibility of multi-county juvenile justice districts.

1. The Committee recommends that a juvenile alleged to be delinquent be afforded the right to trial by jury.

Perhaps the primary reason for advocating trial by jury was expressed in Duncan v. Louisiana, 391 U.S. 145 at 156 (1968). Mr. Justice White, writing for the Court, stated that trial by jury gives the accused "an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge."

The importance of jury trials, however, goes beyond neutralizing the biased judge. A jury trial requires the judge to articulate his views of the applicable law in the case through jury instructions, thereby facilitating appellate court review of the legal issues involved. In addition, when a jury is not present, the evidentiary questions tend to become blurred and appellate review of evidentiary questions is made extremely difficult by the universal assumption that the trial judge disregarded inadmissible evidence and relied only upon competent evidence in arriving at his decision.

There is an additional argument favoring permitting jury trials in juvenile proceedings. The very nature of juvenile court with only one judge in any judicial district, who hears juvenile cases, suggests that it is much more likely that the judge will have had contact with the juvenile prior to the adjudicatory hearing than a judge, sitting for an adult criminal trial, will have had with a defendant. In a custody hearing, a hearing to consider transferring a juvenile to Superior Court, or some other preliminary hearing, the judge may consider properly presented background information which would be unfairly prejudicial to the juvenile at the adjudicatory hearing.

The United States Supreme Court has ruled that jury trials in juvenile proceedings are not required by the United States Constitution: "If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing

that feature. That, however, is the State's privilege and not its obligation." [McKeiver v. Pennsylvania, 403 U.S. 528 at 547 (1971).] Currently, approximately one-third of the states authorize trial by jury in juvenile proceedings, some of which hold that it is mandated by their state constitutions [See R.L.R. v. State 487 P.2d 27 (Alaska 1971)].

2. The Committee recommends that, upon reestablishment, a Courts Commission place consideration of affording the right of trial by jury to juveniles as one of the first items on its agenda for submission to the legislature in 1981.

Recognizing the significant impact that providing for jury trials in juvenile proceedings could have on the entire court system, the Juvenile Code Revision Committee is suggesting that its recommendation that such a right be afforded juveniles, be studied by a Courts Commission. The Committee recommends the Commission study the ramifications of such a recommendation in terms of time constraints, costs, and availability of court personnel and facilities.

LAW ENFORCEMENT: ROLES AND RESPONSIBILITIES

The law enforcement officer's role in the juvenile justice system is a crucial one in that he generally is the juvenile's initial contact with the system. The President's Commission on Law Enforcement and the Administration of Justice emphasizes that very often whether or not a child becomes involved in the juvenile justice system depends upon the outcome of his initial encounter with the police.¹

Law enforcement agencies in North Carolina respond to the community's needs in the area of juvenile justice in several ways. As a result of small case loads in rural areas as well as the lack of manpower and funding, most county sheriffs' departments and smaller municipal agencies use line officers to handle juvenile offenders.² In the larger departments in the urban areas of the state, there is some specialization among units, with a few being responsible only for juvenile cases. The line officer, however, continues to be involved when he has the initial contact with the juvenile offender. It is essential then that his knowledge be independent of that of the juvenile specialist such that his relationship with the juvenile officer is one of successful coordination rather than dependence.

Prior to 1974, there was no training in the area of juvenile justice within the curriculum offered the beginning officer. Approved and effective in the fall of 1978, the number of hours of overall training provided incoming officers

was increased from 160 to 240. Of those hours, eight are in juvenile crisis intervention, a very slight increase from the six hours previously required. With only 90 specialized juvenile units out of some 460 law enforcement departments in the state, with the increasing complexities of law, and with statistics reflecting a concentration of crime among juveniles, eight hours of specialized juvenile training is certainly inadequate.

Recognizing the significant impact the officer has on each juvenile he encounters and recognizing that current statutes give little direction to the officer in the performance of his duties, the Juvenile Code Revision Committee has addressed, both in statutory proposals and in recommendations which follow, the role of the law enforcement officer in the handling of juvenile cases and the training necessary to assume that role:

1. Law enforcement agencies should develop policy guidelines on the use of discretionary judgment including examples of situations where discretionary judgment may be exercised.³ Guidelines should be published and the department should conduct in-service training to affirm its position on the use of discretion. Administrative procedures should be established to structure and control as well as review the use of discretion, and such procedures should include disciplinary action where discretion is misused.⁴

The Juvenile Code Revision Committee has set out in statute a broad policy which recognizes discretion and which encourages the law enforcement officer to use the least restrictive

alternative available which fairly protects the integrity of the law and serves the needs of the juvenile. The Committee has attempted to stress the importance of the officer's fair use of his discretionary authority. To argue that law enforcement officers should administer their responsibilities as prescribed by statute without regard to personal considerations is to seek to perpetuate a myth.⁵ Given the limited resources of law enforcement and the often ambiguous language of the statutes, discretion is an essential reality. Along with exercising discretion by selecting the least restrictive alternative among those available to meet the needs of the juvenile must be the development by the officer of an ongoing relationship with community agencies serving children.

2. Every law enforcement unit with at least five members should have at least one officer who specializes in juvenile work.

3. Every law enforcement agency with twenty or more officers should have a specialized juvenile unit to be responsible for conducting juvenile investigations, assisting line officers in juvenile matters, and maintaining liaison with related agencies within the juvenile justice process such as the court, the prosecutor, the intake counselor, court counselors, Social Services, and other community youth serving agencies.

4. Juvenile officers should be selected from the department's experienced line officers. They should be officers who have mastered the craft of basic police work, and who have acquired, beyond that, the skill and knowledge their specialization calls for. In departments having juvenile units, the supervising officer should be of sufficiently high rank to convey the importance of both the position and the area of responsibility.⁶

5. Recognizing the limited number of separate juvenile units across the state, the Committee recommends that all police officers receive thorough professional training in juvenile problems, procedures, and law. This training should be conducted both upon employment and periodically with in-service training programs.

The following outline of subject areas to be included in the minimum basic training required of every law enforcement officer is proposed:

HISTORY AND PHILOSOPHY OF JUVENILE JUSTICE

Participants would be introduced to the history of the juvenile justice system, which encompasses the treatment of juveniles prior to 1899 when the first juvenile court was established, and the development of the separate system in North Carolina brought about by the first juvenile law in 1919. The 1969 revisions of the juvenile law would also be discussed. The philosophy of the first juvenile court under parens patriae, and the present philosophy would be discussed.

PSYCHOLOGICAL DEVELOPMENT OF THE CHILD

A general discussion of the psychological development of human beings would be traced from birth through the various stages of development to adulthood. Included in this session would be a review of the various types of abnormal behaviors encountered by law enforcement officers among children. Ways of identifying these behaviors and the best method of handling children behaving in this manner would be presented. A general discussion of causes of misbehavior among children would be discussed.

JUVENILE LAWS -- SUPREME COURT -- APPEALS COURT -- DECISIONS

Students would be presented the general laws pertaining to juvenile offenders and victims in 7A, 14, and other chapters in the General Statutes of North Carolina. The important Supreme Court and Court of Appeals decisions having a bearing on juvenile cases would be discussed, such as In re Gault, State v. Rush, Kent v. U.S., and In re Winship.

JUVENILE COURT COUNSELING SERVICES

The role of the juvenile court counselor and intake counselor would be defined in relation to the law enforcement officer, along with the authority and the responsibilities of these offices. The similarities and differences between juvenile and adult court would be discussed.

OVERVIEW OF AGENCIES

The operation of various agencies, both private and public, that provide services to juveniles and would be of assistance to law enforcement officers would be presented. Some of these agencies are: School Services, Mental Health, Health Department, Family Services, various private group homes, the training school, detention facilities, private practicing psychiatrists and psychologists.

JUVENILE VICTIM INVESTIGATION PROCEDURES

The proper way of handling the investigations where a juvenile is the victim would be presented. Included in this discussion

would be the techniques and philosophy that law enforcement should use in the investigations of such crimes as rape, child abuse, neglect, incest, contributing to the delinquency of a minor, and other crimes.

JUVENILE OFFENDER INVESTIGATIONS

The proper methods, techniques, and philosophies of handling the juvenile offender would be discussed. The proper methods of arrest, diversion, and of drafting court petitions would be presented. When a child should be detained, when he should be released to his parents, and the proper methods for same would be discussed. The development and use of a juvenile records keeping system would be incorporated into this session. The handling of neighborhood disputes involving children would be presented.

INTERVIEWING TECHNIQUES

This course would emphasize that when interviewing a child, the officer should use a vocabulary that is understood by the child; that he choose the proper place and time for the interview; that he afford the child the rights he is entitled to under the law; that he insure the child understands these rights; that he interview the child in the presence of his parents and be sure that the child understands rights; and that the officer interview the child with the idea of helping the individual, not just clearing cases.

PREVENTIONS PROGRAMS OVERVIEW

The various programs in operation in North Carolina and other parts of the country that have been used by law enforcement agencies to prevent delinquency would be discussed and explained.

TESTING AND EVALUATION

The appropriate minimum amount of time that should be devoted to the above topic areas are as follows:

History and Philosophy of Juvenile Justice	2 hours
Psychological Development of the Child	8 hours
Juvenile Laws - Supreme and Appeals Court Decisions	4 hours
Juvenile Court Counseling Services	2 hours
Overview of Agencies Available to Assist Law Enforcement	2 hours
Juvenile Victim Investigation Procedures	6 hours
Juvenile Offender Investigations	8 hours
Interviewing Techniques	4 hours
Preventions Programs Overview	2 hours
Testing and Evaluation	<u>2 hours</u>
TOTAL	40 hours

The following subject areas should be offered as minimum training for an officer specializing in juvenile work, with additional training encouraged:

UPDATE ON RECENT LAW CHANGES - COURT DECISIONS

This training would provide the officer with an opportunity

to learn of any recent changes in the North Carolina law, such as the revisions by the Juvenile Code Revision Committee. It would also afford him the opportunity of learning about recent changes in juvenile law brought about by Supreme Court or Court of Appeals decisions. From this information, trends within the juvenile justice system would be apparent.

TRANSACTIONAL ANALYSIS AND ITS RELATIONSHIP TO THE JUVENILE OFFICER

This would be a course of study in the use of transactional analysis and the way it applies to the handling of children and in the everyday life of a juvenile officer. (Other types of counseling techniques could be substituted for transactional analysis.)

CASE STUDY APPROACH IN THE HANDLING OF JUVENILES

In this session, several actual cases of juveniles who have been arrested or who were the victims of crime would be given to small groups of officers. They would discuss the various techniques and diversionary methods that could be used in their handling of these situations. A presentation would be made on each case to the entire group with a discussion following.

MANAGEMENT AND POLICY DEVELOPMENT FOR JUVENILE DIVISIONS

This session would provide the juvenile officer with the expertise necessary to develop proper written departmental handling procedures and policies so as to improve the

relationship of the juvenile officer with other departmental members. The preparation of handling procedures for the entire department would improve the overall expertise of the department. Also included in this session would be techniques which could be utilized in improving the relationship between the juvenile officer and other agencies.

VISIT TO A JUVENILE TRAINING SCHOOL

The juvenile officer would visit a training school facility to see how the institution was operated for the benefit of the children. Only a small percentage of the juveniles arrested by a juvenile unit are actually sent to training school, but this would afford the officer the opportunity to see the facility and to become acquainted with the operation of the school.

The appropriate minimum amount of time that should be devoted to the previous topic areas be as follows:

Update on Recent Law Changes	4 hours
Transactional Analysis	24 hours
Case Study Approach	4 hours
Management and Policy Development	4 hours
Visit to a Training School	<u>4 hours</u>
TOTAL	40 hours

6. An Executive Orientation Course in Juvenile Justice should be established through the N.C. Justice Academy. The course, designed primarily for police chiefs and sheriffs, would be a condensed version of the areas of study recommended in # 5 as part of the basic curriculum required of all law enforcement personnel.

7. A training course designed to educate workers from every area of the juvenile justice system (law enforcement, court counselors, training school, etc.) on how the system works, common problems, and possible methods of cooperation among programs should be established.

8. A program of educational specialization in the area of juvenile justice should be established in the state's colleges and universities with a particularly strong program at one or two locations.

9. The Governor should sponsor and participate in a conference to spotlight and encourage training in the juvenile justice area, with particular emphasis on training for law enforcement personnel.

FOOTNOTES

1. The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.,: U.S. Government Printing Office, 1967, p. 78.

2. Thomas, Mason P. Jr. and Hogue, L. Lynn, Kids and Cops, Chapel Hill, North Carolina: Institute of Government, 1974, p. 11.

3. Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, Maryland: The International Association of Chiefs of Police, 1973, p. 139.

4. Ibid., p. 139.

5. American Bar Association, Standards Relating to the Urban Police Function, New York: Institute on Judicial Administration, 1972, p. 121.

6. American Bar Association (IJA/ABA) Standards, Police Handling of Juvenile Problems, Cambridge, Massachusetts: Ballinger Publishing Company, 1977, p. 7.

CERTIFICATION AND TRAINING OF JUDGES

North Carolina does not require any specialized training or qualifications for juvenile court judges. There is no set term of service and most judges are assigned on a rotation basis for a relatively short period of time.

The Task Force To Develop Standards and Goals for Juvenile Justice and Delinquency Prevention has taken the position that judges should be permanently assigned to the juvenile court, subject to removal for unsuitability or reassignment on request. The Task Force concluded that this policy will provide adequate time for a new judge to develop specialized knowledge and expertise as to the availability of community services in juvenile and family matters, would encourage only those truly interested in the family court to offer their services, and would allow juvenile court judges to become more effective advocates in the community for developing needed services for families and children.

On the other hand, the IJA/ABA Joint Commission concluded that assignments to a family court division should be rotated among the judges of the highest court of general jurisdiction with each serving no more than 2 years in succession. This position, it is argued, would avoid the phenomenon of judges who regard the family court as a personal fief and who overly personalize the administration of juvenile justice, conforming their decisions more to their personal philosophy than to

objective standards of law. Such a policy would also encourage the infusion into the juvenile justice system of fresh insights based on the rotating judges' broad legal expertise.

The National Institute for Juvenile Justice and Delinquency Prevention takes a middle position. It has proposed assignments for a two-year term, with the limitation that judges in a multi-judge district normally serve no more than two consecutive terms unless a specific decision to the contrary is made by the presiding judge of the highest court of general jurisdiction. (It should be noted that most standards also recommend that juvenile court judges be recruited from the highest court of general jurisdiction.) The proposal recognizes that it may take as much as one year for a family court judge to become acclimated and fully cognizant of all available programs and services in the community. Hence, a two year minimum term is recommended. It recognizes further that exceptionally competent and interested judges should be allowed to serve more than four years in succession on the family court bench, but that periodic rotation of judges can strengthen all courts and help to avoid the dangers of both over personalization or routinization of the administration of juvenile justice. Accordingly, the proposal recommends that the presiding judge should be authorized to make exceptions to the normal two-term tenure for family court judges who have demonstrated unusual ability and who

remain keenly interested in serving on the family court bench. The National Institute for Juvenile Justice and Delinquency Prevention suggests that the basic qualification for a juvenile court judge is that of completion of a legal education and licensing as an attorney. This is already required in the vast majority of the states and is recommended by all recent standards and model legislation.

1. The Committee recommends the reestablishment of a Courts Commission to consider as one of its tasks the combining or merging of judicial districts to encompass multi-county districts to be served by a judge who is certified in juvenile law and procedure and who is compensated consistent with his duties and skills.

North Carolina General Statute § 7A-147 stipulates that "the Administrative Office of the Courts may, with the approval of the chief district judge, designate one or more judgeships... as specialized judgeships." As a result of this legislation, the Juvenile Judges Continuing Education Committee was established by the Administrative Office of the Courts to develop a proposal for the certification of juvenile court judges.

In December of 1976, such a proposal was submitted to North Carolina district court judges. Juvenile court judges would be required to be active members of the North Carolina Bar, to have presided during the previous twelve months at one hundred juvenile hearings or at least thirty-five percent of the juvenile hearings in the district and to have completed, during the previous twelve months, two approved continuing education programs. The programs may both have occurred in-state or one

may have been out-of-state and one in-state. The Committee also proposed re-certification every two years. For re-certification, judges would be required to have presided during the previous twelve months at one hundred juvenile hearings or at least thirty-five percent of the juvenile hearings in the district and to have completed two approved continuing education programs during the previous twenty-four months. The programs may have been attended both in one year or one in each of the two years.

The policy of the State as set out in this statute is "to encourage specialization in juvenile cases by district court judges who are qualified by training and temperament to be effective in relating to youth and in the use of appropriate community resources to meet their needs." This policy has not been effected. The Administrative Office of the Courts has acted within its discretion and has not designated any judgeship as a specialized judgeship; however, the Chief Justice of the North Carolina Supreme Court has encouraged chief district judges to assign a judge on a regular basis to juvenile court.

2. The Committee recommends that the Administrative Office of the Courts be mandated to develop a plan for certification of judges qualified to hear juvenile cases.

The Juvenile Code Revision Committee recommends that development of a plan of certification be mandatory. Concern was expressed at every public hearing that the Juvenile Code

Revision Committee consider certification of judges and the need for judges specially trained in the problems of youth as expressed in the philosophy of G.S. §7A-147 was well documented. At least one study done in North Carolina by Dr. Raymond J. Michalowski and Barbara Kaplan of the University of North Carolina at Charlotte recommends that a juvenile court judge have completed at least a four-year college degree with a concentration in the social sciences particularly sociology and psychology and have prior experience working with children outside the courtroom setting in addition to being a member of the Bar. Although such a background would obviously be an asset to one fulfilling his responsibilities in juvenile court, the Committee did not include such provisions in its recommendations.

3. The Juvenile Code Revision Committee recommends that the Administrative Office of the Courts be responsible for providing for annual training for juvenile judges.

This would not mean that the Administrative Office itself would be required to administer the training programs although it certainly could. On the other hand, the Administrative Office may choose to assist judges in receiving training at the numerous excellent workshops and institutes of the National Conference of Juvenile Court Judges, the National District Attorneys Association, the National Council on Crime and Delinquency, etc.

GUIDE TO CITATIONS

The Committee has consulted various model acts and sets of court rules, as well as existing and proposed statutes from several states, in preparing this report. Following is a list of some of the most commonly used sources which are cited in the Commentary in this report.

HEW Model Acts - Model Acts for Family Courts and State-Local Children's Programs, Sheridan, William H. and Beaser, Herbert Wilton, Office of Human Development and Office of Youth Development, Department of Health, Education and Welfare, U.S. Government Printing Office, Washington, D.C. (1975).

IJA/ABA Standards - Juvenile Justice Standards Project, Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, 23 volumes, Ballinger Publishing Company, (Tentative Draft, 1977).

Kids and Cops, Thomas, Mason P. and Hogue, L. Lynn, Institute of Government, University of North Carolina at Chapel Hill (1974).

Model Rules for Juvenile Courts, Council of Judges of the National Council on Crime and Delinquency, New York (1969).

National Juvenile Law Center Model Code - The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act, National Juvenile Law Center, St. Louis University School of Law (1976).

Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice, National Institute for Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Law Enforcement Assistance Administration (1976).

Report of the Task Force on Juvenile Justice and Delinquency Prevention, National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C. (1976).

Rules of Procedure Applicable to Children In the District Court, Administrative Office of the Courts, Raleigh (1977).

Task Force Report: Juvenile Delinquency and Youth Crime, President's Commission on Law Enforcement and Administration of Justice, Washington, D.C. (1967).

PROPOSED
NORTH CAROLINA JUVENILE CODE

A BILL TO BE ENTITLED AN ACT TO PROVIDE A UNIFIED JUVENILE
CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. § 7A-277 through G.S. § 7A-289 and G.S.
§ 7A-289.7 are repealed and the following new Articles
are added to Chapter 7A:

"NORTH CAROLINA JUVENILE CODE.

"ARTICLE 41.

"PURPOSE; DEFINITIONS.

" § 7A-506. Purpose. - This Article shall be interpreted
and construed so as to implement the following purposes and
policies:

(1) To divert juvenile offenders from the
juvenile system through the intake services
authorized herein so that juveniles may remain
in their own homes and may be treated through
community-based services when such an approach
is consistent with the protection of the public
safety;

(2) To provide procedures for the hearing
of juvenile cases that assure fairness and equity
and that protect the constitutional rights of
juveniles and parents; and

(3) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety.

COMMENTARY

A. Summary

This section sets the tone for the juvenile code and provides guidance for interpretation of other statutes pertaining to juvenile justice.

It establishes the goal of the State in dealing with children to divert juvenile offenders so that they may remain with their families when this approach does not endanger the community. At the same time, the section asserts that each juvenile who comes into contact with the juvenile justice system is guaranteed justice and protection consistent with the constitutional rights of the juvenile and the juvenile's parents. Finally, the section evidences the desire of the State to balance its concern for children in trouble with the authority of the court and the duty of the State to maintain order and assure the safety of its citizens.

B. Derivation

This section is based on H.E.W. Model Acts for Family Courts, Section 1.

C. Relationship to Existing Law

The current section of North Carolina law which states the purpose of the juvenile justice system is G.S. § 7A-277. That statute is illustrative of the doctrine of parens patriae, the legal rationale for allowing the state to assume a parental role toward children whose parents are viewed as failures and to establish less formal procedures than are constitutionally required in a criminal proceeding.

The proposed section retains some of the parens patriae aspects, while at the same time recognizes the child's individual rights as a citizen, the growing impact of juvenile crime, and the need for the protection of the public.

" § 7A-507. Definitions. - Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused Juvenile - Any juvenile less than eighteen years of age whose parent or other person responsible for his care:

(a) Inflicts or allows to be inflicted upon the juvenile a physical injury by other than accidental means which causes or creates a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of function of any bodily organ; or

(b) Creates or allows to be created a substantial risk of physical injury to the juvenile by other than accidental means which would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or

(c) Commits or allows the commission of any sexual act upon a juvenile in violation of law; or

(d) Creates or allows to be created serious emotional damage to the juvenile and refuses to permit, provide for, or participate in treatment. Severe emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

(e) Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare - The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Institutional Services.

(3) Assistant Director of Community Based Programs - The person who is responsible for state level assistance in the development, expansion, and evaluation of effective community-based programs.

(4) Assistant Director of Court Services - The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(5) Assistant Director of Institutional Services - The person responsible for the supervision of the administration of institutional and detention services.

(6) Caretaker - Any person other than a parent who is acting in loco parentis to a juvenile including any blood relative; stepparent; foster parent; or house parent, cottage parent or other person supervising a juvenile in a child-care facility.

(7) Chief Court Counselor - The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Assistant Director of Court Services.

(8) Community-Based Program - A program providing non-residential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court - The District Court Division of the General Court of Justice.

(10) Court Counselor - A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Institutional Services under the supervision of the Chief Court Counselor.

(11) Custodian - The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent Juvenile - Any juvenile less than sixteen years of age who has committed a criminal offense under State law or under an ordinance of local government including violation of the motor vehicle laws.

(13) Dependent Juvenile - A juvenile in need of assistance or placement because he has no parent, guardian or custodian responsible for his care or supervision or whose parent, guardian, or custodian is unable to provide for his care or supervision.

(14) Detention - The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Institutional Services.

(15) Detention Home - An authorized facility providing secure custody for juveniles.

(16) Holdover Facility - A place in a jail which has been approved by the Office of Juvenile Justice as meeting the State standards for detention as required in G.S. § 7A-675 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(17) Intake Counselor - A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles - An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge - The district judge assigned by the Chief District Judge to hear juvenile cases.

(20) Juvenile - Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subsections (12) and (29) of this section, juvenile is any person who has not reached his sixteenth birthday. Wherever the term "juvenile" is used with reference to rights and privileges, that term shall encompass the attorney for the juvenile as well.

(21) Neglected Juvenile - A juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

(22) Office of Juvenile Justice - The office responsible for administration of a statewide and uniform system of

juvenile justice. The administrative head of the Office is the Director, who shall be appointed by the Chief Justice of the Supreme Court or an Associate Justice to whom he delegates the authority.

(23) Petitioner - The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(24) Probation - The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(25) Prosecutor - The assistant district attorney assigned by the District Attorney to represent the interests of the State in juvenile proceedings.

(26) Protective Supervision - The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(27) Regional Detention Home - A state-supported and administered regional facility providing detention care.

(28) Shelter Care - The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(29) Undisciplined Juvenile - A juvenile less than sixteen years of age who is unlawfully absent from school; who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; who is regularly found

in places where it is unlawful for a juvenile to be; or who has run away from home.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

"ARTICLE 42. JURISDICTION.

" § 7A-508. Jurisdiction. - The court shall have exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent, undisciplined, abused, neglected, or dependent. For purposes of determining jurisdiction, the age of the juvenile either at the time of the alleged offense or when the conditions causing the juvenile to be abused, neglected, or dependent arose, shall govern. There shall be no minimum age.

The court shall also have exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on Juveniles and the Interstate Parole and Probation Hearing Procedures for Juveniles;

(2) Proceedings to determine whether a juvenile who is on conditional release and under the aftercare supervision of a court counselor has violated the terms of his conditional release established by the Division of Institutional Services;

(3) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when his parent, guardian, legal custodian, or other person standing in loco parentis refuses to consent for treatment to be rendered;

(4) Proceedings to determine whether a juvenile should be emancipated;

(5) Proceedings to terminate parental rights.

COMMENTARY

A. Summary

This section defines the elements giving the court authority to review a child's situation and, if warranted, intervene to protect the child or the community.

The court is the original authority for a child alleged to be delinquent, undisciplined, dependent, neglected, or abused. It is also responsible for proceedings under the Interstate Compact on Juveniles and the Interstate Parole and Probation Hearing Procedures for Juveniles; proceedings for revocation of conditional release; proceedings for judicial consent to emergency surgical or medical treatment when such consent cannot be secured; proceedings on a petition for emancipation and proceedings to terminate parental rights.

The section mandates that there be no minimum age for jurisdictional purposes and that the child's age be determined at the time of the alleged offense or when the conditions causing the child to be neglected, dependent or abused arose.

B. Derivation

This section is based on the Model Code of the National Juvenile Law Center.

C. Relationship to Existing Law

The current jurisdictional statute is G.S. § 7A-279.

The proposed statute would retain jurisdiction for delinquent, undisciplined, neglected, dependent, and abused children. The proposed statute also retains jurisdiction identical to G.S. § 7A-279 for proceedings under the Interstate Compact on Juveniles and for hearings on revocation of conditional release.

In addition, the proposed section establishes the authority of the court to hear proceedings under the Interstate Parole and Probation Hearing Procedures for Juveniles, proceedings involving judicial consent for emergency medical treatment, proceedings to determine emancipation, and proceedings to terminate parental rights.

Finally the statute clarifies when jurisdiction of the court attaches and makes it clear that there is no minimum age for jurisdiction.

Jurisdiction is determined based on the age of the juvenile at the time of the offense. This addresses the case where a fifteen year old commits several criminal offenses just prior to his sixteenth birthday. Under this section, jurisdiction would lie with the juvenile court and the loophole that some feel now exists would be eliminated.

See Rules of Procedure Applicable to Children in the District Court, 2nd Ed., p. 53, Footnote 3, Administrative Office of the Courts, State of North Carolina (1977) and 2nd Opinion of The Attorney General of North Carolina, 8 November 1977, for conflicting interpretations of present law.

Subsection 3 does not conflict with and is intended to supplement G.S. § 90-21 (4) to provide jurisdiction where court authorization is sought for emergency treatment and parental consent is refused.

" § 7A-509. Retention of Jurisdiction. - When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court. Any juvenile who is under the jurisdiction of the court and commits a criminal offense after his sixteenth birthday shall be subject to prosecution as an adult. Any juvenile who is transferred to and sentenced by the Superior Court for a felony offense shall be subject to prosecution as an adult for all other crimes alleged to have been committed by him while he is under the active supervision of the Superior Court. Nothing herein shall be construed to divest the court of jurisdiction in abuse, neglect, or dependency proceedings.

COMMENTARY

A. Summary

This section establishes the time period during which the court may exercise its authority over a child within its jurisdiction. The court may retain authority until a child reaches the age of eighteen or until terminated by the court.

However, any child sixteen or older who commits a criminal offense is to be tried as an adult. In addition, once a juvenile is transferred to Superior Court for trial as an adult, jurisdiction over other offenses, whether a felony or

misdemeanor shall be with the criminal court so long as the juvenile is under the active supervision of the Superior Court. This would mean that a juvenile on probation as a result of transfer and conviction in Superior Court would be tried as an adult for any criminal offense including ordinance violation and traffic offenses allegedly committed while the juvenile is on probation.

B. Derivation

This section is based in part on G.S. § 7A-286.

C. Relationship to Existing Law

G.S. § 7A-286 contains a provision which is substantially the same as the proposed section, ex-

cept that the proposed section continues jurisdiction until the age of eighteen instead of using the G.S. § 7A-286 reference to continuing jurisdiction "during the minority of the child."

The Juvenile Code Revision Committee considered terminating the jurisdiction of the juvenile court in all cases following the transfer and conviction of a juvenile as an adult in Superior Court. Although there was some sentiment among the public for such a provision, the Committee instead suggested somewhat of a hybrid approach such that the juvenile would be tried as an adult while already being treated as an adult. But the Committee did not prohibit the juvenile's return to juvenile court once supervision of the Superior Court has been terminated.

"ARTICLE 43.

"SCREENING OF DELINQUENCY AND UNDISCIPLINED PETITIONS.

" § 7A-510. Intake. - The Chief Court Counselor, under the direction of the Assistant Director of Court Services, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action and to obtain assistance from community resources when court referral is not necessary. The intake counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes.

COMMENTARY

A. Summary

This section mandates the establishment of intake services in each judicial district to screen delinquent and undisciplined cases within the jurisdiction of the court. In addition, it sets out the pur-

pose of intake services and includes that the intake function is not an investigatory service.

B. Derivation

Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice, U.S. Department of Justice, 1976.

C. Relationship to Existing Law

This section mandates intake services that are at present simply authorized in G.S. § 7A-289.7

and elaborates upon present practice.

The Committee considered mandating that intake screen petitions for emancipation but concluded that emancipation--like a proceeding to terminate parental rights--should be reviewed in all cases by the court.

" § 7A-511. Preliminary Inquiry. - When a complaint is received and a petition drawn as authorized in G.S. § 7A-531, the intake counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the intake counselor finds that the facts contained in the petition do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, he shall, without further inquiry, not authorize the petition to be filed.

When requested by the intake counselor, the prosecutor shall assist in determining the sufficiency of evidence as respects the quantum of proof and the elements of offenses.

If the intake counselor finds reasonable grounds to believe that the juvenile has committed one of the following offenses, he shall, without further inquiry, authorize the petition to be filed: murder; rape; arson; any violation of Article 5, Chapter 90 of the North Carolina General Statutes which would constitute a felony if committed by an adult; first degree

burglary; crime against nature where there is no consent; or any felony which involves the wilful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

COMMENTARY

A. Summary

This section requires the intake counselor to make a preliminary inquiry into each case to determine whether the juvenile is within the jurisdiction of the court, whether the facts alleged are legally sufficient, and whether the evidence of the complainant indicates that the alleged acts occurred.

Upon request, the prosecutor shall assist the intake counselor with legal questions that arise in the preliminary inquiry.

Specific serious felonies are set out as requiring the attention of the court without the possibility of diversion.

B. Derivation

See Rules of Procedure Applicable to Children in the District Court (1977), Rule 2.1.

C. Relationship to Existing Law

This section expands upon the provision that a preliminary inquiry be conducted under G.S. § 7A-289.7. It incorporates some of the discussion in the Rules of Procedure Applicable to Children in the District Court.

Current law gives the intake counselor unlimited discretion in diverting cases. In designating certain very serious felonies as nondivertable, the Committee addressed the concern that those cases were of serious nature so as to warrant a judicial hearing. The nondivertable offenses would include armed robbery as a felony committed by use of a deadly weapon and kidnapping in limited cases; however, only the most serious drug offenses are included. Felonious breaking and entering is not included as there were several instances presented to the Committee in which diversion would be in the best interest of the child and the State. The Committee considered both the inclusion of all felonies in the nondivertable offenses and a provision for compulsory transfer to Superior Court for serious felonies and rejected both as too far reaching.

" § 7A-512. Evaluation. - Upon a finding of legal sufficiency, except in the nondivertable offenses set out in G.S. § 7A-511, the intake counselor shall determine whether a petition should be filed, the juvenile diverted to a community resource, or the case resolved without further action. He shall consider criteria which shall be provided by the Assistant Director of Court Services in making his decision. The intake process shall include the following steps:

- (1) Interviews with the complainant and the victim if someone other than the complainant;
- (2) Interviews with the juvenile, his parent, guardian, or custodian;
- (3) Interviews with persons known to have information about the juvenile or family which is pertinent to the case.

Interviews required by this section should be conducted in person but may be conducted by telephone if necessary.

COMMENTARY

A. Summary

Once legal sufficiency is established and probable cause as set out in G.S. § 7A-511, except in those offenses which are nondivertable, the intake counselor shall determine whether a petition should be filed. In making his determination, he must consider criteria drawn by the Assistant Director of Court Services. In addition, the intake process must

include interviews with the juvenile; his parents, guardian, or custodian; the complainant and victim; and any persons who have information relevant to the case.

B. Derivation

G.S. § 7A-289.4 (6); G.S. § 7A-289.7; Rules of Procedure

Applicable to Children in the District Court (1977), Rule 2.1 and Comment.

C. Relationship to Existing Law

This section requires the Assistant Director of Court Services to establish substantive criteria to further insure uniformity statewide as is currently mandated in juvenile probation and aftercare in G.S. § 7A-289.4 (6).

As is observed in the comment on page twelve of the Rules of Procedure Applicable to Children in the District Court (1977), the intake counselor is "vested with almost unqualified discretion" in making his determination under G.S. § 7A-289.6. Current law simply requires the intake counselor to determine "whether it is in the best interest of the child or the State that a juvenile petition be filed."

This section seeks to define the procedure by which he makes his determination. The Rules of Procedure Applicable to Children in the District Court on page nine cites the fact that "best interest" is not defined in G.S. § 7A-289.7 nor are criteria prescribed for making the determination as to whether a petition should or should not be filed with the intake counselor's discretionary authority to make the determination being "qualified only by the intake counselor's conception of what

is in the best interest of the child and State." This section addresses the weakness cited in that comment by mandating the establishment of criteria and by requiring a minimum number of conferences as part of the evaluation process.

The Committee stressed the importance of personal contact with as many individuals involved in the juvenile's case as possible; however, the Committee concluded that authorization of telephonic communication was necessary, realizing the difficulties posed by such conferences in multi-county districts. The statutory use of "should" may be offensive to some but seemed necessary to express the intent of the Committee.

Since it is provided in a later section that information provided to and obtained by the intake counselor is confidential and may not be reviewed by the court until after adjudication, there seemed to be no requirement that the intake counselor advise the juvenile alleged to be delinquent of his right to counsel.

" § 7A-513. Evaluation Decision. - The evaluation of a particular complaint shall be completed within fifteen days, with an extension for a maximum of fifteen additional days at the discretion of the Chief Court Counselor. The intake counselor must decide within this time period whether or not a juvenile petition will be filed. If the intake counselor determines that a petition should be filed, he shall endorse on it the date and the words "Approved for filing," shall sign it beneath such words, and shall transmit it to the Clerk of Superior Court. If the intake counselor determines that a petition should not be filed, he shall immediately notify the complainant in writing with reasons for his decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The intake counselor shall then sign his name on the petition beneath the words "Not approved for filing."

Any petition not approved for filing shall be destroyed by the intake counselor after holding the petition for a temporary period to allow follow up and review as provided in § 7A-514 and § 7A-516.

COMMENTARY

A. Summary

This section requires completion of the evaluation process and the determination as to

whether a petition should be filed in fifteen days except when an additional fifteen

days is permitted by the Chief Court Counselor. If the intake counselor decides a petition should be filed, he shall date it, place his signature beneath "Approved for filing," and take it to the clerk. If he decides a petition should not be filed, he must explain to the complainant why he reached that conclusion. Notification shall be in writing and shall include notice that the complainant may have the decision of the intake counselor reviewed by the prosecutor.

The intake counselor must retain the petition for sufficient time to allow for follow up or review; however, once that time has lapsed and the petition has not been filed, it shall be destroyed.

B. Relationship to Existing Law

G.S. § 7A-289.7 limits the conduct of the preliminary inquiry to fifteen days but does not require that the decision be made immediately. This section clarifies current law to require both the evaluation and determination within a set period of time. The Committee considered suggestions that the time period provided was too long when one considers a child's perspective of time; however, the Committee concluded that there may be some serious cases which will require much consultation before determining whether community resources may be utilized to assist a child. The Committee felt that the profes-

sionalism of the intake counselor would insure completion of the evaluation process as early as possible and, in most cases, without any extension of time. Provisions are expanded to describe the procedure to be followed by the intake counselor to further insure conformity throughout the state.

G.S. § 7A-289.7 requires the intake counselor to notify the complainant of his decision not to file a petition but does not provide, as this section does, that he must state reasons for his decision.

Present law provides for review by the court whereas this section provides for review by the prosecutor to preserve the impartiality of the court.

Finally, there is no provision in current law for destruction of an unfiled petition because in many jurisdictions, the petition is not drawn until after the intake counselor's preliminary inquiry is complete. That procedure required another trip to the courthouse by the complainant so that the petition could be signed and verified.

" § 7A-514. Referral and Follow-up. - The intake counselor may refer any case to an appropriate public or private resource unless the offense is one wherein a petition is required as set out in § 7A-511. After making a referral, the intake counselor shall ascertain that the juvenile actually contacted or was seen by the resource to which he was referred. In the event that the juvenile does not contact or visit the community resource, the intake counselor may reconsider his decision to divert and may file a petition within sixty days from the date of the referral. If the juvenile contacts or is seen by the resource, the intake counselor shall close the file.

COMMENTARY

A. Summary

This section allows for diversion by the intake counselor in any case except those designated as non-divertable in G.S. § 7A-511. It further allows the intake counselor to reconsider his decision as to whether a petition should be filed within sixty days of the date of the referral where and only where no effort has been made by the juvenile to contact the resource. Where contact is made, the file must be closed.

B. Derivation

IJA/ABA Standards, The Juvenile Probation Function, 2.4; President's Commission on Law

Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967); National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" (1973); and Kelly, Schulman and Lynch, "Decentralized Intake and Diversion," 27 Juvenile Justice (1976).

C. Relationship to Existing Law

Although some intake counselors follow diverted cases to assist in future referrals, this is not the case statewide. This is a new section.

The provisions set out do not contemplate continued

counseling or judgment as to whether the juvenile is benefiting from the service but only ascertainment as to whether contact was made. If contact was not made, the filing of a petition is not mandatory but is permissible. Certainly it is hoped that the intake counselor would seek to divert to additional community resources if diversion would be in the best interest of the juvenile.

A child's concept of time differs greatly from

an adult's. What seems a brief span of time to an adult seems an eternity to a child. Because of this difference, presentees suggested that 30 days would be a long enough period to have a case pending; however the Committee observed that in some counties such a period is necessary to get even the initial appointment with Mental Health or another local resource.

" § 7A-515. Request for Review. - The complainant shall have five calendar days from receipt of the intake counselor's decision not to approve the filing of a petition to request review by the prosecutor. The intake counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the petition. The prosecutor shall notify the complainant and the intake counselor of the time and place for the review.

COMMENTARY

A. Summary

This section limits the time in which the complainant may seek review of the intake counselor's decision such that the complaint may not be held indefinitely over the juvenile. Procedure is specified such that the complainant will

notify the intake counselor of his desire for review; the prosecutor will have the responsibility of notifying the intake counselor and the complainant of the time and place of the review.

B. Derivation

Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice, U.S. Department of Justice, September 30, 1976.

statutory guidelines as to notice, time or place for conduct of the judicial review. This section establishes guidelines for review by the prosecutor.

C. Relationship to Existing Law

G.S. § 7A-289.7 provides no

" § 7A-516. Review of Determination that a Petition Should Not Be Filed. - The prosecutor shall review the intake counselor's determination that a juvenile petition should not be filed no later than twenty days after the complainant is notified. Review shall include conferences with the complainant and the intake counselor. At the conclusion of the review, the prosecutor may either affirm the decision of the intake counselor or may direct the filing of a petition.

COMMENTARY

A. Summary

This section sets the procedure for review of the intake counselor's decision that a petition should not be filed.

B. Derivation

Rules of Procedure Applicable to Children in District Court. Raleigh, North Carolina: Administrative Office of the Courts (1977) page 13; IJA-ABA Standards, The Juvenile Probation Function, 2.16.

C. Relationship to Existing Law

G.S. § 7A-289.7 sets out no procedures as to the conduct of a review and makes no mention of action that may be taken by the court upon review. Current law provides for judicial review of the intake counselor's decision. This section would change that provision to allow for review by the prosecutor. Review by the prosecutor would remove the judge from this preliminary proceeding so as not to prejudice the court as a trier of facts.

"ARTICLE 44.

"SCREENING OF ABUSE, NEGLECT, AND DEPENDENCY COMPLAINTS.

" § 7A-517. Protective Services. - The Director of the Department of Social Services in each county of the state shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework or other counseling services to parents or other caretakers as provided by the director to help the parents or other caretakers and the court to prevent abuse, neglect, or dependency, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life.

COMMENTARY

A. Summary

Protective services shall be established in each county by the Director of the Department of Social Services. The Chapter 110 definition of "protective services" is expanded in the second paragraph which describes the responsibilities of protective services workers. In addition, this section reflects the clear separation of neglect and abuse that is set out in the definitions.

B. Derivation

This section is based on G.S. § 110-117 (6) and on IJA/ABA Standards, Abuse and Neglect, Standard 3.1.

C. Relationship to Existing Law

This section and indeed this entire article expands the authority of the protective services section of the county

Department of Social Services to include cases where the child is alleged to be dependent as well as neglected or abused.

The concern of the Committee that the juvenile re-

ceive needed services and that the family be treated as a unit is evidenced in the second paragraph. Provisions allowing jurisdiction over parents later on in this Act further reflect that concern.

" § 7A-518. Duty to Report Child Abuse, Neglect, or Dependence. - Any person who has cause to suspect that any juvenile is abused, neglected, or dependent shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependence; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give his name, address, and telephone number.

In the case of any report of abuse, the Director of the Department of Social Services shall notify the appropriate local law enforcement agency immediately upon receipt of such report.

COMMENTARY

A. Summary

Any person who has cause to suspect that a child is abused, neglected, or dependent must report the case to the Department of Social Services in the county where the child lives or is found.

A report of child abuse, neglect, or dependence may be made orally, by telephone, or in writing. It shall contain as much information as the person can furnish including the name and address of the child; the name and address of the child's parent or other caretakers; the age of the child; the present whereabouts of the child; the facts surrounding any injury or condition resulting from abuse, neglect, or dependence; and any other information which might be useful in determining the cause of the injuries or condition. The local law enforcement agency must be contacted immediately in any case of alleged abuse.

B. Derivation

This section is based on G.S. § 110-118 (a) (b) (c).

C. Relationship to Existing Law

The proposed section would expand the area of possible reports to include dependent, as well as neglected or abused children. In addition, the responsibility of all persons to report suspicions of dependency, abuse, or neglect is an expansion of the present requirements that a professional person report suspected abuse and that other persons with knowledge report cases of abuse. The section also establishes a mechanism for notifying law enforcement personnel who may gather evidence while it is still fresh, both to assist social services in the child's behalf and to assist the district attorney's office in determining if criminal charges should be brought against any adults involved.

" § 7A-519. Investigation by Director; Notification of Complainant. - When a report of abuse, neglect, or dependence is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse, neglect, or dependency, and the risk of harm to the juvenile in order to determine whether protective services should be provided or a petition filed. The investigation and evaluation shall include a visit to the place where the juvenile resides.

If the investigation reveals abuse, neglect, or dependence, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parents or other caretakers refuse to accept the protective services provided or arranged by the Director, the Director shall sign a petition to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a petition which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Act.

In performing any of these duties, the Director may utilize the staff of the county Department of Social Services or any other public or private community agencies that may be available. The Director may also consult with the available state or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependence when requested by the Director.

No later than five days after receipt of the complaint, the Director shall notify the complainant in writing if a petition has not been filed. The notification shall specify action undertaken or contemplated by the department to protect the welfare of the juvenile, shall state reasons for the decision not to file a petition, and shall include notice of the complainant's right to have the decision reviewed by the prosecutor.

COMMENTARY

A. Summary

Social services upon receiving a report of child abuse, neglect, or dependency shall make a prompt and thorough investigation to ascertain the facts and determine whether or not protective services should be provided and whether a petition should be filed. The investigation must include a visit to the child's residence. If the investigation shows the child to be in danger, social ser-

vices is given the authority to assume temporary custody by compliance with Article 46 of this Act.

If social services has not filed a petition, they must notify the person making the complaint of that decision in writing within five days of the time the complaint was made. The notice must describe action

taken, state reasons for not filing a petition, and include notice of the complainant's right of review.

B. Derivation

This section is based on G.S. § 110-119.

C. Relationship to Existing Law

Present G.S. § 110-119 (1) requires that anyone reporting abuse or neglect be notified within two days of the action of social services. The proposed section draws on G.S. § 7A-289 (3), which requires an intake worker to notify a complainant only if a petition is not filed in delinquency and undisciplined complaints and provides a means for review. The proposed section would require notice to the complainant only if a petition is not filed. Notice must be within five days of the receipt of the report and must be made by mail. Notice

must include some justification for the decision and must clearly inform the complainant of his right to appeal the decision to the district attorney's office.

Again, the notification requirement and the right of review reflect the Committee's concern as to service delivery. This is something that is being done with ease by intake counselors in delinquency and undisciplined complaints. The provision responds to concerns voiced to the Committee that even when a county Department of Social Services failed to respond after a child was reported to be abused two or more times, there seemed to be no recourse.

The section also requires a visit to the child's residence as part of the investigation. Further, it allows, by virtue of another legislative proposal of the Committee, the protective services worker to assume immediate custody of a child in danger on a temporary basis without a court order.

" § 7A-520. Evaluation for Court. - In all cases in which a petition is filed, the Director of the Department of Social Services shall prepare a report for the court containing a home placement plan and a treatment plan deemed by the Director to be appropriate to the needs of the juvenile. The report shall be available to the judge immediately following the adjudicatory hearing.

COMMENTARY

A. Summary

This section provides that the county Department of Social Services is responsible for providing a home study to the court in all cases of abuse, neglect, and dependency. Obviously this would include cases that have been reviewed and approved by the prosecutor.

This section does not preclude the department recommending that a child remain within his home but requires that reasons for that recommendation be stated. It further requires that the report be prepared and presented at the dispositional hearing.

B. Derivation

G.S. § 7A-285.

C. Relationship to Existing Law

The proposed section provides that the report that is currently ordered by the court would be automatically prepared by the county Department of Social Services.

This addresses the concern expressed by presentees to the Committee as to the delay between adjudication and disposition for social services to prepare such a report. This mandates completion prior to the adjudicatory hearing for presentation at the dispositional hearing.

" § 7A-521. Request for Review. - The complainant shall have five calendar days from receipt of the decision of the Director of the Department of Social Services not to petition the court to notify the Director that he is requesting review by the prosecutor. The Director shall notify the prosecutor immediately of the request and shall transmit to the prosecutor a copy of the investigation report. The prosecutor shall notify the complainant and the Director of the time and place for the review.

COMMENTARY

A. Summary

Once the complainant has been notified of a decision not to file a petition, he has five days to notify social services if he wishes to request a review of the case by the district attorney's office. If the complainant does request that the decision be reviewed, social services shall notify the prosecutor and send a copy of the investigation report to assist the prosecutor in his review.

B. Derivation

This section is an extension of IJA/ABA Standards, Intake and Predisposition Investigative Services, 2.16.

C. Relationship to Existing Law

There is currently no statutory provision concerning review of the decision of social services not to file a petition in the case of a report of child abuse or neglect. This provision, based on model code recommendations, is designed to address the Committee's concern that any child who needs services be given access to those services and to seek to reduce decisions that may be based on placements available. It parallels the system of review of intake decisions in delinquent and undisciplined cases.

" § 7A-522. Review by the Prosecutor. - The prosecutor shall review the Director's determination that a petition should not be filed within twenty days after the complainant is notified. The review shall include conferences with the complainant, the protective services worker, the juvenile, and other persons known to have pertinent information about the juvenile or his family. At the conclusion of the conferences, the prosecutor may affirm the decision made by the Director or may authorize the filing of a petition.

COMMENTARY

A. Summary

If a complainant requests review of a decision not to file a petition, the prosecutor must act within 20 days of the time the complainant was notified. Review by the prosecutor shall include interviews with the complainant, the child, the protective services worker involved, and any other persons who have information about the case. After his investigation, the prosecutor may support the decision of social services or overrule it and authorize the filing of a petition. In the latter case where filing is authorized, the complainant would be sworn by the clerk with reference to the allegations.

B. Derivation

This section is an extension of IJA/ABA Standards, Intake and Predisposition Investigative Services, 2.16.

C. Relationship to Existing Law

There is no provision in current North Carolina statutes allowing an appeal to the prosecutor from a decision of social services.

" § 7A-523. Duty of County Department of Social Services to Report Evidence of Abuse. - If the Director finds evidence that a juvenile has been abused as defined by statute, he shall immediately make a written report of his findings to the prosecutor who shall determine whether criminal prosecution is appropriate and who may request the Director to sign the appropriate criminal warrant. The Director of the Department of Social Services shall submit a report of alleged abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

COMMENTARY

A. Summary

If the director discovers evidence of child abuse, he must immediately report in writing to the prosecutor who shall determine if criminal prosecution is warranted. The prosecutor may request the Director of the Department of Social Services to sign a criminal warrant if necessary. The director shall also submit a report to the central registry in cases of abuse

and neglect under policies set by the Social Services Commission.

B. Derivation

This section is taken from G.S. § 110-119 (3) and (4).

C. Relationship to Existing Law

This section makes no change in current law.

" § 7A-524. Authority of Medical Professionals in Abuse Cases. - Any physician or administrator of a hospital, clinic, or other similar medical facility to which an abused juvenile is brought for medical diagnosis or treatment shall have the right to retain physical custody of the juvenile when the physician who examines the juvenile certifies in writing that the juvenile should remain for medical reasons or that in his opinion it may be unsafe for the juvenile to return to his parent, guardian, or caretaker. In such case, the physician or administrator shall notify the parent, guardian, or caretaker and the Director of the Department of Social Services of the county where the juvenile resides. If the parent, guardian, or caretaker contest this action, the Director shall request a hearing before the Chief District Court Judge or the judge designated by him within the judicial district wherein the juvenile resides or where the hospital or institution is located for determination of whether the juvenile shall be returned to his parent, guardian, or caretaker. Pending the hearing, the hospital, clinic, or other similar medical facility may retain temporary physical custody of the juvenile. The hospital, clinic, or medical facility:

(1) Shall request the Director of the Department of Social Services in the county where the juvenile resides to petition the court in the district where the juvenile resides to award physical custody of the juvenile to the Director for placement with a relative or in a foster home under the supervision of the Department of Social Services; or

(2) Shall request the Director of the Department of Social Services in the county where the hospital or other medical facility is located to petition the court in the district where the hospital or other medical facility is located to award physical custody of the juvenile to the Director for placement with a relative or in a foster home under the supervision of the Department of Social Services.

Upon receipt of a request pursuant to subsections (1) or (2), the Director of the Department of Social Services shall authorize the filing of such petition without delay.

COMMENTARY

A. Summary

Any physician or administrator of a medical facility which receives a child who has been abused for medical diagnosis or treatment shall have the right to retain temporary custody of the child if the physician who examines the child certifies in writing he needs medical attention or that it may be unsafe to return custody to the child's parent or caretakers. If the physician or administrator decides to retain custody, he must notify the child's parent or caretaker and the Director of the county Department of Social Services. If the parent wants to protest this action, he may request a hearing on the matter in court either where the child resides or where the medical facility is located. Pending a hearing, the medical facility may retain physical custody of the child. However, if the facility

does retain custody, it must request that the Director of the Department of Social Services, in either the district where the child resides or where the medical facility is located, petition the court to award custody to the director for placement with a relative or in a foster home under the supervision of the county Department of Social Services. If the director receives such a request, he must authorize the filing of such a petition without delay.

B. Derivation

This section is taken from G.S. § 110-118 (d).

C. Relationship to Existing Law

This section makes no change in current law.

" § 7A-525. Immunity of Persons Reporting. - Anyone who makes a report pursuant to this Article, testifies in any judicial proceeding resulting from the report, or otherwise participates in the program authorized by this Article, shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for such action unless such person acted in bad faith or with malicious purpose.

COMMENTARY

A. Summary

Anyone who makes a report of abuse, neglect, or dependency pursuant to this Article, who testifies in any judicial proceeding resulting from a report, or who participates in the program authorized by this Article shall be immune to any civil or criminal liability resulting from such report or testimony unless the report or testimony was made in bad faith or with malicious intent.

B. Derivation

This section is taken from G.S. § 110-118 (c) and § 110-120.

C. Relationship to Existing Law

This section does not change current law.

" § 7A-526. Waiver of Privileges. - Neither the physician-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence of abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse or neglect is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications.

COMMENTARY

A. Summary

Neither the physician-patient privilege nor the husband-wife privilege may be invoked for the exclusion of evidence in any proceeding in which abuse or neglect of a child is in issue or in any judicial proceeding resulting from a report under this Article. This is true with respect to both the competency of a witness and the exclusion of confidential communications.

B. Derivation

This section is taken from G.S. § 110-121.

C. Relationship to Existing Law

This section makes no change in current law.

" § 7A-527. Central Registry. - The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission which provide for its appropriate use for study and research. Data shall not be used at any hearing or court proceeding unless based upon a final judgement of a court of law.

COMMENTARY

A. Summary

The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this article to provide data for study and evaluation purposes and to identify repeated instances of abuse involving the same child or the same family. County directors of social services shall furnish this information to the Department of Human Resources. This information shall be confidential, subject to rules and regulations of the Social Services Commission, but in no event can such

data be used at any judicial proceeding unless based on a final judgment of a court of law.

B. Derivation

This section is taken from G.S. § 110-122.

C. Relationship to Existing Law

This section makes no change in current law.

"ARTICLE 45. VENUE; PETITION; SUMMONS.

" § 7A-528. Venue. - (1) A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall be commenced and adjudicated in the district in which the offense is alleged to have occurred.

When a proceeding in which a juvenile is alleged to be delinquent or undisciplined is commenced in a district other than that of the juvenile's residence, the judge shall proceed to adjudication in that district. After adjudication, these procedures shall be available to the court:

- (a) The judge may transfer the proceeding to the court in the district where the juvenile resides for disposition.
- (b) Where the proceeding is not transferred under subsection (a), the judge shall immediately notify the Chief District Judge in the district in which the juvenile resides. If the Chief District Judge requests a transfer within five days after receipt of notification, the judge shall transfer the proceeding.
- (c) Where the proceeding is not transferred under (a) or (b), the judge, upon motion of the juvenile, shall transfer the proceeding to the court in the district where the juvenile resides for disposition. The judge shall advise the juvenile of the juvenile's right to transfer under this section.

(2) A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the judge, in his discretion or upon motion of the juvenile, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this subsection may be made at any time.

COMMENTARY

A. Summary

This section mandates that any delinquency or undisciplined proceeding shall be initiated and proceed through adjudication in the district in which the offense is alleged to have occurred. This will allow the court economical and convenient access to witnesses, law enforcement officers, and the physical circumstances in which the alleged offense took place.

However, after adjudication, since the juvenile may have previous contacts with the court in the district of his residence, there are provisions allowing transfer of a juvenile from another district to his home district in order to develop a disposition which truly reflects the juvenile's situation and needs. The case may be transferred for disposition on the motion of the court which presided over the adjudicatory hearing and it must be transferred upon the motion of the juvenile or the court in the district of residence.

An abuse, neglect, or dependency proceeding may be initiated

either in the district where the child resides or where the child is found. If the action begins in a district other than that of the juvenile's residence, the case may be transferred at any stage of the proceeding on motion of the child or the court to the district in which the juvenile resides.

B. Derivation

The National Juvenile Law Center Model Code, Section 5; Remarks of Judge Grafton Beaman and District Attorney Thomas S. Watts.

C. Relationship to Existing Law

There is not a current North Carolina statute dealing specifically with venue, although G.S. § 7A-279 mentions jurisdiction "over any case involving a child who resides in or is found in the district."

The proposed section clarifies where a particular case should be initiated and

establishes a flexible procedure for transfer if the circumstances indicate that such an action would result in a more appropriate disposition. In addition, the section provides for district venue rather than

county venue. This should alleviate difficulties in complying with deadlines in multi-county districts and was proposed by a judge and district attorney in such a district.

" § 7A-529. Pleading and Process. - The pleading in a juvenile action is the petition. The process in a juvenile action is the summons.

COMMENTARY

A. Summary

Pleading and process in a juvenile action shall be accomplished by a petition and a summons respectively.

B. Derivation.

This section is based on G.S. § 15A-301 and § 15A-921.

C. Relationship to Existing Law

This is a new section.

" § 7A-530. Petition. - The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of his parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the accusation.

Sufficient copies of the petition shall be prepared so that copies will be available for each juvenile, for each parent if living separate and apart, for the court counselor or social worker, and for any person determined by the court to be a necessary party.

COMMENTARY

A. Summary

This section outlines the information which must be included in a juvenile petition. The petition must contain the child's name, date of birth, and address as well as the name and last known address of the child's parents. In addition, it must contain factual allegations which invoke the juvenile jurisdiction of the court.

Juveniles residing in the same household may not be included in the same abuse, neglect, or dependency petition.

In a delinquency petition, the allegations must contain a precise statement of facts supporting every element of a criminal offense and the juvenile's involvement in such offense so that the juvenile fully understands the allegations against him.

Finally, the section requires sufficient copies of the petition to make them available to all necessary parties to the action.

B. Derivation.

This section is based on G.S. § 7A-281 and G.S. § 15A-924 (5). See also Rule 3 and Comment, Rules of Procedure Applicable to Children in the District Court (1977).

C. Relationship to Existing Law

The present North Carolina statute concerning the petition is G.S. § 7A-281, which requires basically the same information as the proposed section. One minor change is the requirement of date of birth rather than age.

The second paragraph is similar to G.S. § 15A-924 (5), and is limited to the delinquent case as it is patterned after criminal procedure.

The section also assures that all necessary parties to the action have access to the factual information contained in the petition.

A change from current law is that consolidation of juveniles in abuse, neglect, or dependency cases in one petition is no longer allowed.

" § 7A-531. Receipt of Complaints; Filing of Petition. -

(1) All complaints concerning a juvenile alleged to be delinquent or undisciplined shall be received by the Clerk of Superior Court, shall be drawn as a petition, shall be signed by the complainant and verified before the Clerk, and shall then be referred to the intake counselor for screening. Thereafter, the Clerk shall accept and file, recording the date of filing, the petition when it is endorsed "Approved for Filing" and signed by the intake counselor.

(2) All complaints concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the Director of the Department of Social Services for screening. Thereafter, if it is determined by the Director that a petition should be filed, the petition shall be drawn by the Clerk of Superior Court, signed by the Director, verified before the Clerk and filed by the Clerk, recording the date of filing.

(3) The Clerk shall also draw, verify, file, and index petitions authorized for filing by the prosecutor following a review by the prosecutor of a screening decision.

COMMENTARY

A. Summary

All complaints alleging a juvenile to be delinquent or undisciplined shall be received by the Clerk of Superior Court, drawn as a petition,

signed by the complainant, verified by the Clerk, and referred to the intake counselor for screening. The petition shall be filed if returned with the intake counselor's

endorsement.

All complaints involving abuse, neglect, or dependence shall be referred to the county Department of Social Services. At the request of the Director of the Department of Social Services, the Clerk shall draw a petition, shall have the director sign it, and shall verify and file the petition.

The Clerk shall also draw, verify, and file petitions authorized by the prosecutor as a result of the prosecutor's review of an intake or social services screening decision.

B. Derivation

This section is based on G.S. § 7A-281 and G.S. § 7A-289.7.

C. Relationship to Existing Law

Subsection (1) of the proposed section is based on current screening procedures authorized by G.S. § 7A-281 and § 7A-289.7.

Subsection (2) is designed to establish a similar procedure whereby the county Department of Social Services screens all complaints alleging abuse, neglect, or dependence. The two subsections together assure that no complaint will come before the court without prior consideration as to the need for court intervention.

Subsection (3) is a new section authorizing a petition based on the review process established by Articles 43 and 44.

" § 7A-532. Immediate Need for Petition When Clerk's Office is Closed. - (1) All complaints which may arise when the office of the Clerk of Superior Court is closed shall be referred to the intake counselor or the Director of Social Services according to the nature of the complaint.

(2) When the office of the Clerk of Superior Court is closed, a magistrate may be authorized by the Chief District Judge to draw, verify, and issue petitions as follows:

- (a) When an intake counselor requests a petition alleging a juvenile to be delinquent or undisciplined, or
- (b) When the Director of the Department of Social Services requests a petition alleging a juvenile to be abused, neglected, or dependent.

(3) The authority of the magistrate under subsection (2) shall be limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition issued under this section shall be delivered to the Clerk's office for processing as soon as that office is open for business.

COMMENTARY

A. Summary

When the office of the Clerk of Superior Court is closed, the Chief District Court Judge may authorize a magistrate to draw and verify a petition at the

request of the intake counselor or Director of the Department of Social Services. This authority is limited to emergency situations. A petition issued in this manner must be processed by the clerk's office on the next business day.

Any complaints received in the magistrate's office must be referred to intake or the Department of Social Services for preliminary screening.

B. Derivation

This section is based on North Carolina G.S. § 7A-281.

C. Relationship to Existing Law

The proposed section establishes emergency filing procedures for all situations involving the jurisdiction of the juvenile court similar to those currently authorized in G.S. § 7A-281.

" § 7A-533. Commencement of Action. - An action is commenced by the filing of a petition in the Clerk's office when that office is open or by the issuance of a juvenile petition by a magistrate when the Clerk's office is closed, which issuance shall constitute filing.

COMMENTARY

A. Summary

The juvenile action is commenced when a petition is filed in the Clerk's office or issued by a magistrate in an emergency situation.

B. Derivation

See Rules of Procedure Applicable to Children in the District Court (1977), Rule 3.1.

C. Relationship to Existing Law

This is a new section which clarifies the point at which a juvenile action is commenced.

" § 7A-534. Issuance of Summons. - After a petition has been filed, the Clerk of Superior Court shall issue a summons to the juvenile, to the parent, and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons. The summons shall advise the parent that upon service, jurisdiction over him is obtained and that failure of the parent to comply with any order of the court pursuant to G.S. § 7A-584 may cause the court to issue a show cause order for contempt.

A summons shall be directed to the person summoned to appear and shall be delivered to any law enforcement officer having authority and territorial jurisdiction to execute the process.

COMMENTARY

A. Summary

This section establishes the procedure for issuing summons to the necessary parties once the petition has been filed. A summons must be issued to the child, the child's parent, and the guardian, custodian or caretaker, requiring them to appear at the time and place stated in the summons. Each summons must be accompanied by a copy of the petition. The summons also serves to notify the parents that they are within the jurisdiction of the court and that failure

to obey a court order in the case may result in an order requiring them to appear and demonstrate to the court why they should not be held in contempt of court. Such summons shall be directed at the person to appear and shall be delivered to a law enforcement officer for execution.

B. Derivation

This section is based on G.S. § 7A-283, and G.S. § 15A-301.

C. Relationship to Existing Law

The present North Carolina statute governing the summons, G.S. § 7A-282, authorizes a summons to be issued to the child, the child's parents, guardian, or custodian at the direction of the court.

This section requires the court to direct the issuance of a summons to the child, the child's parents, and guardian, custodian or caretaker.

The proposed section also requires that a copy of the petition be attached to the summons so that everyone involved in the case will be fully informed of the circumstances.

In addition, under the proposed section the summons must reflect the fact that the court has obtained jurisdiction over the parents as well as the child and gives notice to parents that they shall cooperate with the court in attempting to resolve the child's situation.

Finally, the proposed section draws on G.S. § 15A-301 to establish procedures for delivery of the summons.

" § 7A-535. Service of Summons. - The summons shall be personally served upon the parents or either of them, the guardian, custodian, or caretaker, and the juvenile not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the judge.

If the parent, guardian, or custodian entitled to receive a summons cannot be found by a diligent effort, the judge may authorize service of the summons and petition by mail or by publication as prescribed by Rule 4 of the Rules of Civil Procedure, adapting the Notice of Service of Process by Publication to a juvenile action as approved by the judge.

If the parent, guardian, or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, he may be proceeded against as for contempt of court.

The provisions of G.S. § 15A-301 (a), (c), (d), and (e) relating to criminal process shall apply to juvenile process; provided the period of time for return of an unserved summons shall be 30 days.

COMMENTARY

A. Summary

This section sets out procedures and time schedules to be followed in notifying the necessary parties of their obligation to appear.

The summons must be served on the child and child's parents, guardian, or custodian at least five days before the hearing unless the judge waives the time schedule.

If the parents, guardian, or custodian cannot be found, the judge may authorize service by mail or by publication in local news media in accordance with procedures established by Rule 4 of the Rules of Civil Procedures. However, the judge may alter these procedures to protect the identity of the child or the nature of the action.

If the parents, guardian, or custodian do receive the summons and petition and fail to appear at the hearing without good cause, the court may find the non-appearing party in contempt. The statutes governing criminal process shall apply to juvenile process.

B. Derivation

This section is based on G.S. § 7A-282, G.S. § 15A-301, and G.S. § 1A-1, Rule 4.

C. Relationship to Existing Law

The proposed section is substantially the same as G.S. § 7A-283. The proposed section would allow the judge to alter the form of service by publication and would establish procedures for delivery of notice to necessary parties.

"ARTICLE 46.

"TEMPORARY CUSTODY; SECURE AND NONSECURE CUSTODY; CUSTODY HEARINGS.

" § 7A-536. Taking a Juvenile into Temporary Custody. -

(1) A juvenile may be taken into temporary custody by a law enforcement officer without a court order if grounds exist for the arrest of an adult in identical circumstances under G.S. § 15A-401 (b).

(2) A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a court counselor if there are reasonable grounds to believe that he is an undisciplined juvenile.

(3) A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a Department of Social Services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order.

(4) A juvenile may be taken into custody without a court order by a law enforcement officer, by a court counselor, or by personnel of the Division of Institutional Services as designated by the Office of Juvenile Justice if there is probable cause to believe the juvenile is an absconder from any state training school or approved detention facility.

COMMENTARY

A. Summary

This section allows a law enforcement officer to temporarily take a juvenile into custody in any situation where his behavior, if exhibited by an adult, would be grounds for arrest under North Carolina law.

The section also allows a law enforcement officer or court counselor to take a juvenile into temporary custody without a court order where circumstances evidence reasonable grounds to believe the child is undisciplined.

Further, the section allows a law enforcement officer or a social services worker to temporarily take into custody a juvenile when there are reasonable grounds to believe that the child is abused, neglected, or dependent.

Finally, provision for temporary custody of an absconder from a state training school or approved detention facility is made.

B. Derivation

This section is based on G.S. § 134A-24; and National Juvenile Law Center Model Code (1975).

C. Relationship to Existing Law

Under present North Carolina law, taking a child into custody under court order after a petition has been filed is authorized in G.S. § 7A-284. However, the legal basis for taking a child into custody without a court order has never been clarified by either statute or court decision,

except in the case of a runaway under G.S. § 134A-24. Law enforcement officers have presumed to act under the broad, unexamined authority of parens patriae [See In re Burris, 275 N.C. 517, 169 S.E. 2nd 879 (1969), *aff'd*, 403 U.S. 528 (1971)].

The officer's common law authority to stop and question a person based on reasonable suspicion (See Terry v. Ohio, 392 U.S. 1; Adams v. Williams, 407 U.S. 143; and State v. Streeter, 283 N.C. 203) is affected only insofar as the six hour limitation. The Committee considered criticism that the six hour restriction on temporary custody without an authorized order makes no allowance for situations where delays are unavoidable. The suggestion that language similar to that requiring an officer to take an arrested person before a magistrate "without unreasonable delay" should be incorporated was discussed at length. The Committee, however, concluded that custody of a juvenile without a court order should be limited to a brief period of time.

This section clearly delineates the circumstances under which a child may be taken into custody without a court order. In providing the statutory authority for temporary custody of a juvenile, the section in no way authorizes detention (secure custody) of that juvenile until an order for secure custody is obtained.

This section simply gives the authorized person the power to take a juvenile into his own

custody under limited circumstances.

" § 7A-537. Duties of Person Taking Juvenile into Temporary Custody. - (1) A person who takes a juvenile into custody without a court order under G.S. § 7A-536 (1), (2), or (3) shall proceed as follows:

(a) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.

(b) Release the juvenile to his parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary.

(c) If the juvenile is not released under subsection (b), the person having temporary custody shall proceed as follows:

1. In the case of a juvenile alleged to be delinquent or undisciplined, he shall request the Clerk of Superior Court to draw the petition pursuant to G.S. § 7A-531 or if the Clerk's office is

closed, the magistrate pursuant to G.S. § 7A-532. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge for a determination of the need for continued custody.

2. In the case of a juvenile alleged to be abused, neglected, or dependent, he shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge for a determination of the need for continued custody.

(d) A juvenile taken into temporary custody under this Article shall not be held for more than 6 hours unless:

1. A petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and

2. An order for secure or nonsecure custody has been entered by a judge.

(2) A person who takes a juvenile into custody under G.S. § 7A-536 (4) shall, after contacting a judge and receiving an order for secure custody, transport the juvenile to the nearest

approved facility providing secure custody. He shall then contact the administrator of the training school or detention facility from which the juvenile absconded, who shall be responsible for returning the juvenile to that facility.

COMMENTARY

A. Summary

This section outlines the steps that should be followed once a child is taken into temporary custody without a court order.

For all juveniles taken into temporary custody, except an absconder, the person having custody must first contact the parents, guardian, or custodian of the child, and then determine whether the child should be detained or released. This decision must be made within six hours. If the person having custody believes the child should be detained, they must immediately contact the intake counselor or director of social services who is responsible for screening the complaints and deciding upon the appropriate course of action. If continued custody is warranted, the intake counselor or director of social services must contact the judge to request an order to that effect.

A person taking an absconder into temporary custody should proceed to a nearby facility providing secure custody and contact the facility from which the juvenile escaped. The administrator of such facility shall be responsible for the return of the juvenile.

B. Derivation

This section is based on G.S. § 134A-24; and Model Juvenile Court Act, National Juvenile Law Center (1975).

C. Relationship to Existing Law

Under present North Carolina law, there is no clear provision for taking a child into custody without a court order, except in the case of an absconder. Most of this section, therefore, has no counterpart in existing law and is primarily aimed at establishing definite procedures for temporary custody which balance the juvenile's due process rights with the state's duty to protect the juvenile and the community.

The Committee considered suggestions that the order be obtained "without unreasonable delay" rather than within 6 hours to allow flexibility for unavoidable delays. The Committee concluded that with the stipulation that the judge, intake counselor, or his designated substitute may authorize continued custody, law enforcement officers would be able to contact an official within six hours as someone would be on call 24 hours a day, 7 days a week.

This provision as it relates to law enforcement addresses the taking of a juvenile into custody, comparable to arrest procedures set out in G.S. § 15A-401. Just as that statute does not prohibit a stop for questioning based on reasonable suspicion but not

amounting to probable cause which is reasonable, nor would this section. It would limit any custody to 6 hours unless an order had been obtained.

" § 7A-538. Authority to Issue Custody Orders; Delegation. -

In the case of any juvenile alleged to be within the jurisdiction of the court, and when the judge finds it necessary to place the juvenile in custody, he may order that the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in G.S. § 7A-539.

The Chief District Judge may delegate the court's authority to issue secure and nonsecure custody orders for juveniles. This authority may be delegated by administrative order which shall be filed in the office of the Clerk of Superior Court. The administrative order shall specify which officials shall be contacted for approval of continued custody and may include any available district judge, intake counselors and members of the Chief Court Counselor's staff.

COMMENTARY

A. Summary

If the court finds it necessary to place a juvenile alleged to be within the jurisdiction of the court into custody, the court may order such cus-

tody following the criteria for secure or nonsecure custody set out in G.S. § 7A-539.

The Chief District Judge may delegate this authority by an administrative order specifying which officials shall be contacted to make this decision. Officials that may be designated to exercise this authority are any available district judge, the intake counselor, or other members of the court counselor's staff.

B. Derivation

This section is based on G.S. § 7A-286 (3).

C. Relationship to Existing Law

This section does not significantly change the current law contained in G.S. § 7A-286 (3). It is designed to establish the authority of the court to issue custody orders and to allow the Chief District Judge to designate officials who may exercise that authority. This should assure that someone has the authority to make a decision in a relatively short period of time.

" § 7A-539. Criteria for Secure or Nonsecure Custody. - (1)

When a request is made for nonsecure custody, the judge shall order nonsecure custody only when he finds that there is a reasonable factual basis to believe the matters alleged in the petition are true, and

(a) The juvenile has been abandoned; or

(b) The juvenile has suffered physical injury or sexual abuse or is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, or custodian has inflicted the injury or abuse; created the conditions causing the injury, abuse, or exposure; failed to provide, or is unable to provide, adequate supervision or protection; or

(c) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his

parent, guardian, or custodian is unwilling or unable to provide or consent to the medical treatment; or

(d) The parent, guardian, or custodian consents to the nonsecure custody order.

In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

(2) When a request is made for secure custody, the judge may order secure custody only where he finds there is a reasonable factual basis to believe that the juvenile actually committed the offense as alleged in the petition and

(a) The juvenile is charged with a nondivertable offense; or

(b) That the juvenile is presently charged with three or more felonies of similar nature arising out of separate incidents and in such close proximity of time as to indicate a continuous course of conduct that could result in additional charges against the juvenile unless he is detained; or

(c) That the juvenile has wilfully failed to appear on the pending delinquency charge or has a record of wilful failures to appear at court proceedings; or

(d) That by reason of the juvenile's threat to flee from the court's jurisdiction or circumstances indicating preparation or design to flee from the court's jurisdiction there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained; or

(e) That exhaustive efforts to identify the juvenile have been futile or by reason of his being a nonresident of the State of North Carolina there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained; or

(f) That the juvenile is an absconder from any state training school or detention facility in this or another state; or

(g) That the juvenile has a recent record of adjudications for violent conduct resulting in serious physical injury to others, the petition pending is for delinquency, and the charge involves physical injury; or

(h) That by reason of the juvenile's recent self-inflicted injury or threatened or attempted self-injury there is reasonable cause to believe the juvenile should be detained for his own protection for a period of less than 24 hours while action is initiated to determine the need for inpatient hospitalization; or

(i) That the juvenile alleged to be undisciplined by virtue of his being a runaway should be detained for a period of less than 24 hours to facilitate reunion with his parents or to facilitate evaluation of the juvenile's need for medical or psychiatric treatment.

(3) When a juvenile has been adjudicated delinquent, the judge may order secure custody pending the dispositional hearing or pending placement of a delinquent juvenile pursuant to G.S. § 7A-583.

(4) In determining whether secure custody should be ordered, the judge should consider the nature and circumstances of the offense; the weight of the evidence against the juvenile; the juvenile's family ties, character, mental condition, and school attendance record; and whether the juvenile is on conditional release. If the criteria for secure custody as set out in subsections (2) and (3) are met, the judge may enter an order directing an officer or other authorized person to assume custody of the juvenile and to take the juvenile to the place as is designated in the order.

COMMENTARY

A. Summary

This section sets out the procedures to be used and criteria to be considered in issuing a court order for custody of a juvenile.

Subsection (1) authorizes the judge to enter an order for nonsecure custody if a petition or motion for review show a reasonable basis to believe that the allegations are true and at least one of the following is also true:

(a) The child has been abandoned;

(b) The child has suffered or is likely to suffer physical injury or sexual abuse because the parents caused the injury, or failed to adequately supervise and protect the child;

(c) The child is in need of

medical treatment and his parents are unwilling or unable to provide such treatment;

(d) The child's parents consent to the nonsecure custody.

Subsection (1) also forbids the placement of an abused, neglected, or dependent child in secure custody.

Subsections (2), (3), and (4) set forth both criteria for secure detention as well as other factors to be considered in making the decision. These subsections advocate the release of the juvenile unless the petition shows a reasonable factual basis to believe the juvenile committed the offense and at least one of the following is true:

(a) That the offense charged is one of those serious enough to be nondivertable pursuant to G.S. § 7A-511;

(b) That the juvenile is charged with multiple felonies which are similar but occur as separate incidents and evidence a pattern of conduct which indicates that the juvenile will repeat the offense if released;

(c) That the juvenile has willfully failed to appear in the pending proceeding or at other court proceedings;

(d) That the juvenile has threatened to flee or circumstances indicate that the juvenile will flee and not appear in a pending delinquency charge unless detained;

(e) That the juvenile cannot be identified or is from out of state so that flight would preclude an adjudication;

(f) That the juvenile has run from a training school or detention facility in this or another state;

(g) That the petition pending is for alleged violent delinquent conduct and the juvenile has a demonstrable record of adjudications for injuring others through violent behavior;

(h) That the juvenile has threatened, attempted, or accomplished an injury to himself and he must be detained for his own protection. Such detention is limited to 24 hours for the sole purpose of determining the need for inpatient hospitalization;

(i) That an alleged undis-

ciplined juvenile runaway may be held for 24 hours or less to reunite his family, to locate non-secure placement, or to evaluate his need for medical or psychiatric treatment.

Finally, the juvenile may be detained following an adjudication of delinquency pending a dispositional hearing or placement.

In addition to the criteria mentioned above, in making the decision the judge should also consider the nature and circumstances of the alleged offense; the weight of the evidence; the juvenile's family situation, character, mental condition, and school attendance record; and previous contact with the juvenile justice system. The period of secure custody for an undisciplined child is limited to 24 hours.

B. Derivation

This section is based on committee discussions using the following materials as background information: G.S. § 7A-284; the IJA/ABA Juvenile Justice Standards, Standards Relating to Interim Status, Standard 6.6; IJA/ABA Juvenile Justice Standards, Standards Relating to Abuse and Neglect, Standard 2.1 (a); HEW Model Acts for Family Courts, Section 20; and the Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice from the National Institute for Juvenile Justice and Delinquency Prevention, Standard 3.152.

C. Relationship to Existing Law

Subsection (1) is designed to supercede current G.S. § 7A-284, which allows a judge to order immediate custody when a child is

"in danger or subject to such serious neglect as may endanger his health or morals, or that the best interest of the child requires" it. The proposed subsection sets more definite criteria to assist the judge in making this decision. Also in conjunction with G.S. § 7A-538, this decision could be made by an official with delegated authority, as well as a judge. G.S. § 7A-284 authorizes this action only by order of a judge.

Subsections (2), (3), and (4) would replace parts of G.S. § 7A-286 (3) which allows secure custody entirely in the discretion of the court for the protection of the community or in the best interest of the child. The proposed section sets out detailed criteria which must be met before a secure custody order is issued, as well as enumerates other factors which should be considered in making the decision.

An undisciplined juvenile may not be detained for more than 24 hours. The Committee considered the input received at the public hearings that 24 hours was not sufficient time to make arrangements to return the child home and certainly not sufficient time to allow parents from out of state to arrive to pick up a runaway. The Committee shared the concerns of presentees but to comply with the Juvenile Justice and Delinquency Prevention Act included this provision.

" § 7A-540. Order for Secure or Nonsecure Custody. - The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, or custodian by the official executing the order. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance

with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

COMMENTARY

A. Summary

The custody order must be in writing and a copy must be given to the juvenile's parents. If the juvenile is held in detention, a copy of the custody order must accompany him to the detention or approved holdover facility. This section protects the officer executing the order from civil or criminal liability.

B. Derivation

This section is based on G.S. § 7A-284; G.S. § 7A-286 (3); and G.S. § 15A-301.

C. Relationship to Existing Law

Current G.S. § 7A-286 (3) requires a written order and notification of the juvenile's parents for a detention order. The proposed section would extend these requirements to orders for both secure and nonsecure custody.

There is no provision in current law for protection of an officer in serving a custody order. This section parallels the adult statute concerning criminal process, G.S. § 15A-301.

" § 7A-541. Place of Secure or Nonsecure Custody. - (1)

A juvenile meeting the criteria set out in G.S. § 7A-539, subsection (1) may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(a) A licensed foster home or a home otherwise authorized by law to provide such care or

(b) A facility operated by the Department of Social Services or

(c) Any other home or facility approved by the court and designated in the order.

(2) A juvenile meeting the criteria set out in G.S. § 7A-539 (2) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Office of Juvenile Justice.

(3) Until July 1, 1981, if no juvenile detention home is available, a juvenile meeting the criteria set out in G.S. § 7A-539 (2) may be detained in a holdover facility which shall be inspected pursuant to G.S. § 108-79 through 81, and G.S. § 7A-681, and shall meet the State standards provided for in G.S. § 7A-675.

(4) Subsection (3) expires on June 30, 1981.

COMMENTARY

A. Summary

This section specifies the places that may be used for custody.

Nonsecure custody for a child may be in a licensed foster home, in a home authorized by law to provide such care, in a facility operated by the county department of social services, or in any other home or facility approved by the court.

Secure custody for a juvenile may be in a county or regional detention home. If there is not a detention home available, a separate section of a local jail, which has been approved by the Office of Juvenile Justice, may be used until July 1, 1981.

B. Derivation

This section is based on current G.S. § 7A-286 (2) (b) and (c); G.S. § 110-24; and HEW Model Acts, Section 22.

on which it is based; however, G.S. § 7A-286 (2) (b) and (c) are designed as dispositional alternatives and are adopted here for custody prior to a hearing. The use of a jail with a holdover facility is prohibited after July 1, 1981.

C. Relationship to Existing Law

This proposed section is substantially similar to the two sections of current North Carolina law

" § 7A-542. Hearing to Determine Need for Continued Secure or Nonsecure Custody. - (1) No juvenile shall be held under a custody order for more than five calendar days without a hearing on the merits or a hearing to determine the need for continued custody. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. § 7A-538, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of District Court in the district where the order was entered if such session precedes the expiration of the five calendar day period.

(2) Any juvenile who is alleged to be delinquent shall be advised of his right to have an attorney represent him as provided in G.S. § 7A-544 if he appears without counsel at the hearing.

(3) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and his parent, guardian, or custodian an

opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(4) The judge shall be bound by criteria set forth in G.S. § 7A-539 in determining whether continued custody is warranted.

(5) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(a) Release on the written promise of the juvenile's parent, guardian, or custodian to produce him in court for subsequent proceedings; or

(b) Release into the care of a responsible person or organization; or

(c) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(d) Any other conditions reasonably related to securing the juvenile's presence in court.

(6) If the judge determines that the juvenile meets the criteria in G.S. § 7A-539 and should continue in custody, he shall issue an order to that effect. The order shall be in

writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(7) Pending a hearing on the merits, further hearings to determine the need for continued custody shall be held at intervals of no more than seven calendar days.

COMMENTARY

A. Summary

This section establishes the procedures to be followed to continue custody after a custody order has been issued.

A juvenile cannot be held for more than five calendar days without a hearing on the merits or to decide if continued custody is necessary. If the custody order was not issued by the judge, but by an official exercising delegated authority, the hearing must be as soon as possible but still within the five day time period.

The juvenile must be advised of his right to counsel. The continued custody hearing is informal; the court is not bound by the usual rules of evidence in a formal judicial hearing, but all parties must be given the opportunity to present evidence and to examine witnesses.

The judge shall be bound by the criteria in G.S. § 7A-539 in determining the need for continued custody, bearing in mind as well

that with respect to secure custody, the juvenile should be released if possible, with conditions or restrictions only if necessary to assure the juvenile's appearance in court. The State shall bear the burden throughout of showing that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice.

If at the conclusion of the hearing the judge decides that custody should continue, his order must be in writing, supported by the evidence and noting the purpose that continued custody will achieve. Custody pending a hearing on the merits cannot be delayed for more than seven calendar days without a subsequent hearing on the need for continued custody.

B. Derivation

This section is based on committee discussion using the following information as a basis: G.S. § 7A-284 and § 7A-286 (3); HEW Model Acts for Family Courts, Section 23; and IJA/ABA Juvenile Justice Standards Project, Standards Relating to Interim Status, Standards 3.4, 4.2, 4.3, 7.6, and 7.9.

C. Relationship to Existing Law

G.S. § 7A-284 and G.S. § 7A-286 (3) currently provide procedures for a hearing to judicially determine the need for continued custody or detention. They require a hearing within five calendar days and written findings of fact if custody is continued. The proposed statute establishes more specific guidelines and time limits for this procedure.

The proposed statute also sets out due process safeguards with respect to the child, consistent with In re Gault, 387 U.S. 1 (1967) by assuring the juvenile adult representation, advising of the right to an attorney, allowing active participation on the child's behalf at the hearing, and requiring findings of fact with adequate justification for the action taken.

Finally, the statute makes reference to established criteria which can guide the judge in his decision as well as suggesting alternatives to secure custody, which would still assure the juvenile's presence in court.

" § 7A-543. Telephonic Communication Authorized. - All communications, notices, orders, authorizations, and requests authorized or required by G.S. § 7A-537, G.S. § 7A-539, and G.S. § 7A-540 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

COMMENTARY

A. Summary

This section authorizes parties necessary to a temporary custody or custody order situation to communicate by telephone if person to person contact is impractical or impossible. However, the section guarantees the integrity of the process by requiring a written record, including identification of those involved, of all functions accomplished in this manner.

B. Derivation

This is based in part on G.S. § 7A-284 (b).

C. Relationship to Existing Law

The proposed section is designed to speak to the emergency situation when the authority of the court may be impeded by time or distance and relates to G.S. § 7A-284 (b).

"ARTICLE 47. BASIC RIGHTS.

" § 7A-544. Juvenile's Right to Counsel. - A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings and, except as provided in subsection (1) of this section, the judge may appoint counsel for the juvenile alleged to be delinquent at any stage of the proceedings.

(1) In all proceedings on a petition wherein it is alleged that a juvenile is delinquent, the judge shall appoint counsel for the juvenile unless:

- (a) Counsel is retained for the juvenile or
- (b) The juvenile has made a voluntary, knowing, and intelligent waiver of his right to counsel.

(2) Notwithstanding the provision for waiver as set out in subsection (1) (b), no juvenile may be transferred to Superior Court for trial as an adult or committed to the Division of Institutional Services unless the juvenile was represented by counsel at the preliminary hearing at which a transfer order was issued or at the adjudicatory and dispositional hearings at which a commitment order was issued; however, the juvenile's refusal to accept the services of counsel appointed for him shall not preclude his commitment to a training school or his transfer to Superior Court.

(3) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.

COMMENTARY

A. Summary

Any juvenile who is petitioned to court as delinquent, undisciplined, abused, neglected, or dependent has the right to be represented by counsel in all proceedings. The court may appoint counsel at any time and must appoint counsel for the juvenile in delinquency cases unless counsel has been retained or the juvenile waives his right to counsel. However, no juvenile may be transferred to Superior Court or committed to the Division of Institutional Services unless represented by counsel at the preliminary hearing and at the adjudicatory and dispositional hearings.

B. Derivation

This section is based on G.S. § 7A-285 and case law including In re Gault, 387 U.S. 1(1967); Kent v. U.S. 383 U.S. 541 (1966); In re Garcia, 9 N.C. App. 691 (1970); and In re Walker 14 N.C. App. 356 (1972).

C. Relationship to Existing Law

The right to counsel at delinquency proceedings is presently defined by statute in G.S. § 7A-285. The right to counsel in delinquency

proceedings is defined in In re Gault, 387 U.S. 1(1967), and In re Garcia, 9 N.C. App. 691 (1970) which affirms the right to counsel unless it was knowingly waived in a delinquency proceeding.

North Carolina case law does not establish the right to counsel for an alleged undisciplined child (See In re Walker 281 N.C. 245 (1972)); however, the Committee agrees with the thrust of the dissent by Justices Bobbitt and Sharp that due process requires "that counsel be assigned to represent (the child) at any hearing which might result in an adjudication prejudicial to her."

The proposed section does allow the juvenile to waive counsel; however, the Committee believes that no juvenile should be transferred to Superior Court or committed to the Division of Institutional Services without representation. Therefore, the proposed section requires the court to assess the seriousness of the charge and assign counsel, even over the protestations of the juvenile, if there appears to be a real possibility of transfer to Superior Court or commitment to the Division of Institutional Services.

The Committee discussed the holding of the United States Supreme Court in Faretta v. California 422 U.S. 806 (1975), that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. In addition to noting that Faretta has not been held applicable to juveniles, the Committee stressed the injustice of incarceration of a juvenile who may lack the ability

to recognize the consequences of his waiver. Certainly the ability of the juvenile to understandingly waive his right to counsel is neither dependent upon nor related to whether he may be transferred or committed to a training school; but the Committee wished to insure to every extent possible that before a juvenile is transferred or committed, all legal defenses are raised.

" § 7A-545. Appointment of Guardian. - In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for him and may represent the juvenile in legal actions before any court. The guardian shall also have authority to consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces, and undergoing major surgery. The authority of the guardian shall continue until the guardianship is terminated by order, until the juvenile is emancipated pursuant to Article 56, or until the juvenile reaches the age of majority.

COMMENTARY

A. Summary

In any case where a child's parent does not appear with him, or when the court believes it would be in the best interest of the child, the court shall appoint a guardian of the person for the child. The guardian shall have the care, custody, and control of the child or may arrange placement for the child. The guardian may represent the child in legal actions, and consent to certain actions, including marriage, enlisting in the armed forces, and surgery. The guardian's

authority shall continue in the discretion of the court during the minority of the child or until he is emancipated.

B. Derivation

This section is based on G.S. § 7A-286 (7).

C. Relationship to Existing Law

This section makes no change in the substance of the law as it presently is in G.S. § 7A-286 (7).

" § 7A-546. Appointment of Guardian Ad Litem. - When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile if he finds as a fact that the juvenile is in need of and can benefit from such representation. The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to appear on behalf of the juvenile in the court proceeding and to perform necessary and appropriate legal services on his behalf; to present relevant facts to the judge at the adjudicatory hearing and to explore options with the judge at the dispositional hearing; to protect and promote the best interest of the juvenile until formally relieved of the

responsibility by the judge; and to appeal, when advisable, from an adjudication or order of disposition to the Court of Appeals.

The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to appear with the juvenile in any criminal action wherein he may be called on to testify in a matter relating to abuse.

The guardian ad litem shall be an attorney-at-law, licensed to practice in the State of North Carolina. In no case may the judge appoint a public defender as guardian ad litem. The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in his opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of such information or reports shall be respected by the guardian ad litem and no disclosure of any such information or reports shall be made to anyone except by order of the judge.

COMMENTARY

A. Summary

In any case alleging abuse or neglect, the court shall appoint a guardian ad litem, which is a representative of the child for the purposes of the pending case, if the court finds as a fact that the child does need and will benefit from representation. The duties of the guardian ad litem are to investigate the case, determine the needs of the child, and identify community resources that meet the child's needs; to appear on behalf of the child as legal representative during all proceedings; and to protect the child and promote the best interests of and least detrimental alternatives for the child at every stage of judicial proceedings. The guardian ad litem shall be a licensed attorney.

The court may permit the guardian ad litem to demand any information or reports, whether or not confidential, that may be relevant to the case. Neither

the physician-patient privilege nor the husband-wife privilege may prevent disclosure. The guardian ad litem must respect confidential information and may not disclose such information except with permission of the court.

B. Derivation

This section is based on G.S. § 7A-283.

C. Relationship to Existing Law

The proposed section is similar to the guardian ad litem provisions of current G.S. § 7A-283 with these exceptions: (1) The dependent child is included as well as the neglected and (2) Appointment shall be made upon a finding of need and benefit rather than appointment being made unless there is a finding that the child does not need and would not benefit from such an appointment.

" § 7A-547. Payment of Court Appointed Attorney or Guardian Ad Litem. - An attorney or guardian ad litem appointed pursuant to G. S. § 7A-544 or G.S. § 7A-546 of this Article shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require the parent or a custodian other than a Department of Social Services to pay the attorney's fee or reimburse the State unless the parent or custodian is indigent. A parent or custodian shall not be ordered to pay court appointed counsel in cases in which the child requested the right to execute a waiver of counsel. The test of the parent or custodian's ability to pay shall be the test applied to appointment of an attorney in cases of indigency. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. § 5A-21.

COMMENTARY

A. Summary

Fees for court appointed officials shall be set by the court. If the court appoints an attorney or guardian ad litem, the court may require the child's parents or legal custodian to bear the expense unless they are indigent. Exceptions are in cases where the county Department of Social Services has custody or where the juvenile has requested a

waiver of counsel. The courts order shall be enforceable in the same manner as an order of contempt.

B. Derivation

This section is based on G.S. § 7A-286 (6).

C. Relationship to Existing Law

The Committee believes that counsel at many juvenile hearings is essential; however, the Committee also believes that the juvenile's parents should bear the financial burden, if able, rather than the State. There is an exception for a juvenile who has requested to waive coun-

sel in a delinquency proceeding because it was felt to be unfair to require payment for a service the juvenile has asked not to receive even though that service may be required under G.S. § 7A-544 (2).

"ARTICLE 48.

"LAW ENFORCEMENT PROCEDURES IN DELINQUENCY PROCEEDINGS.

" § 7A-548. Role of the Law Enforcement Officer. - A law enforcement officer, when he takes a juvenile into temporary custody, should select the least restrictive course of action appropriate to the situation and needs of the juvenile from the following:

- (1) To divert the juvenile from the court by
 - (a) release;
 - (b) counsel and release;
 - (c) release to parents;
 - (d) referral to community resources;
- (2) To seek a petition;
- (3) To seek a petition and request a custody order.

COMMENTARY

A. Summary

This section recognizes the role of law enforcement in supporting the philosophy that community resources should be utilized and informal means emphasized, wherever possible, in addressing the problems of juvenile offenders.

B. Derivation

Kids and Cops, page 26.

C. Relationship to Existing Law

This is a new section.

" § 7A-549. Interrogation Procedures. - (1) Any juvenile in custody must be advised prior to questioning:

- (a) That he has a right to remain silent; and
- (b) That any statement he does make can be and will be used against him; and
- (c) That he has a right to have a parent, guardian, or custodian present during questioning; and
- (d) That he has a right to consult with an attorney and that one will be appointed for him if he is not represented and wants representation.

(2) When the juvenile is less than fourteen years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (1); however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(3) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, the officer shall cease questioning.

(4) Before admitting any statement resulting from custodial interrogation into evidence, the judge must find that the juvenile knowingly, willingly, and understandingly waived his rights.

COMMENTARY

A. Summary

Any juvenile in custody must be advised of his right to remain silent; that any statement he makes can and will be used against him; that he may have a parent, guardian, or custodian present during any questioning; and that he has a right to an attorney, who will be appointed for him if necessary.

If the juvenile is under fourteen years old, no in-custody statement resulting from interrogation may be admitted into evidence unless the juvenile's parents, guardian, custodian, or attorney is present during the interrogation.

If an attorney is not present, the parent must be informed of the juvenile's rights; but he is not empowered to waive the juvenile's rights.

The fact that he has answered some questions or volunteered some statements does not deprive him of the right to refrain from answering further (See Miranda v. Arizona, 384 U.S. 436, 16 L. ed. 2d 694 at 707 (1966)).

Before the court may accept evidence obtained as a result of

questioning, it must find that the juvenile knowingly, willingly, and understandingly waived his rights.

B. Derivation

See Miranda v. Arizona, 384 U.S. 436 (1966); Dissent in 77-5953, Riley v. Illinois, 4/24/78. See also 77-5874, Little v. Arkansas, 4/3/78.

C. Relationship to Existing Law

The proposed section has no statutory equivalent in current North Carolina law. The rights outlined in subsections (1), (2), and (4) are required by current case law. Subsection (3) was added by the Committee to assure that the juvenile may have his parent present during questioning if he desires and is an addition to case law requirements. The Committee heard from presentees that in many cases, presence of a parent would be coercive and the juvenile under 14 should be permitted to refuse to have any of the persons listed present. Those arguments were rejected.

On April 24, 1978, the United States Supreme Court denied review of the murder conviction of a 16-year-old Illinois youth whose request to speak with his father before he talked to police was ignored. Police had advised him of his right to an attorney. (See Riley v. Illinois) The Committee was aware of that decision and adopted Justice Thurgood Marshall's view that the practice of honoring adult requests for legal advice but ignoring juvenile requests for parental help is incongruous.

It is clear that by "in-custody" the Committee means after the juvenile has been taken into custody or otherwise deprived of his freedom [See Miranda v. Arizona, 16 L. ed. 2d 694 at 706 (1966)]. Spontaneous utterances made while the juvenile is in custody are not excluded.

Before any in-custody statement can be accepted into evidence, the court must find that, consistent with this section, the juvenile made an intelligent, voluntary waiver of his rights.

" § 7A-550. Authority to Issue Nontestimonial Order in the Case of Juveniles Alleged to be Delinquent. - Nontestimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to this Article. A nontestimonial identification order authorized by this Article may be issued by any judge of the District Court or of the Superior Court upon request of a prosecutor. As used in this Article, "nontestimonial identification" means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a juvenile.

COMMENTARY

A. Summary

This section authorizes the judge to issue a nontestimonial order for identification procedures as allowed in the case of adults pursuant to Article 14 of Chapter 15A of the General Statutes. It requires an order by the court and is limited to those cases in which the juvenile is alleged to be delinquent.

B. Derivation

G.S. § 15A-271; 18 U.S.C.A. §5038 (1974); IJA/ABA Standards, Standards on Police Handling of Juvenile Problems, 3.2.

C. Relationship to Existing Law

This is a new provision. It clarifies and expands upon G.S. § 15A-502. Some judges interpreted that statute to mean that juveniles could be fingerprinted and photographed in that it "did not authorize" same but neither did it forbid fingerprinting or photographing.

Others interpreted the statute to allow the fingerprinting of juveniles only after the juvenile had been bound over

to Superior Court for trial as an adult. The scope of identification techniques is greatly expanded.

This section requires that an officer obtain a court order before fingerprinting, photographing or conducting any other nontestimonial identification on a juvenile.

Although the breathalyzer test and polygraph are not identification procedures, it should be noted that the Committee was requested and did discuss whether those procedures should be used in juvenile cases by law enforcement. The Committee concluded that use of the breathalyzer test and polygraph should not be specifically authorized. Nor did the Committee specifically forbid their use.

" § 7A-551. Time of Application. - A request for a non-testimonial identification order may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing or prior to trial in Superior Court where a case is transferred pursuant to Article 49 of this Act.

COMMENTARY

A. Summary

A request for an order may be made at any time prior to the adjudicatory hearing or prior to the trial of the case where it is transferred to Superior Court for trial as in the case of adults.

B. Derivation

G.S. § 15A-272.

C. Relationship to Existing Law

This is a new section.

" § 7A-552. Basis for Order. - An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense has been committed which if committed by an adult would be punishable by imprisonment for more than one year; and

(2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

COMMENTARY

A. Summary

This section limits the fingerprinting, photographing, etc., of juveniles pursuant to court order to a juvenile alleged to have committed an offense for which a one year sentence could have been imposed had he been an adult. It further requires a finding that the procedures will be of material aid and that there are reasonable grounds to suspect the juvenile committed the offense.

B. Derivation

G.S. § 15A-273.

C. Relationship to Existing Law

This section is new and adopts the grounds described in G.S. § 15A-273 in the case of adults to the juvenile law.

" § 7A-553. Issuance of Order. - Upon a showing that the grounds specified in G.S. § 7A-552 exist, the judge may issue an order following the same procedure as in the case of adults under G.S. § 15A-274, G.S. § 15A-275, G.S. § 15A-276, G.S. § 15A-277, G.S. § 15A-278, G.S. § 15A-279, G.S. § 15A-280, and G.S. § 15A-282.

COMMENTARY

A. Summary

This section incorporates the provisions of G.S. § 15A applicable to the issuance, modification, service, contents and implementation of the order into the juvenile law.

B. Derivation

G.S. § 15A-274, G.S. § 15A-275, G.S. § 15A-276, G.S. § 15A-277, G.S. § 15A-278, G.S. § 15A-279, G.S. § 15A-280, G.S. § 15A-282.

C. Relationship to Existing Law

This is a new section.

" § 7A-554. Nontestimonial Identification Order at Request of Juvenile. - A juvenile in custody for or charged with an offense which if committed by an adult would be punishable by imprisonment for more than one year may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures.

COMMENTARY

A. Summary

This section requires the judge to order nontestimonial identification procedures if requested by the juvenile where it appears that the results will be of material aid in determining whether the juvenile committed the offense.

B. Derivation

G.S. § 15A-281.

C. Relationship to Existing Law

This is a new section.

" § 7A-555. Destruction of Records Resulting From Non-testimonial Procedures. - The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

(1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of such evidence shall be destroyed.

(2) If in the District Court or Superior Court pursuant to a transfer a juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under fourteen years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records shall be destroyed.

(3) If a juvenile fourteen years of age or older is found to have committed a delinquent act which would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in such a manner and under such safeguards as to limit their use to inspection for comparison purposes by law enforcement officers only in the investigation of a crime.

(4) If the juvenile is transferred to Superior Court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.

(5) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.

(6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of such records. Following destruction, the law enforcement agency shall make written certification to the court of such destruction.

COMMENTARY

A. Summary

This section provides for destruction of the results of tests when a petition is not obtained, when a juvenile is found not guilty and when a juvenile is found guilty but is under fourteen years of age and has committed a misdemeanor. When the juvenile is over fourteen and found to have committed a felony in a case retained by the juvenile court, records resulting from the nontestimonial order may be maintained in the court file.

B. Derivation

IJA/ABA Standards, Standards on Juvenile Records and Information Systems, 19.6; Virginia Juvenile and Domestic Relations District Courts, Article 12, 16.1-299.

C. Relationship to Existing Law

This is a new section.

" § 7A-556. Penalty for Wilful Violation. - Any person who wilfully violates provisions of this Article which prohibit conducting nontestimonial identification procedures without an order issued by a judge shall be guilty of a misdemeanor.

COMMENTARY

A. Summary

This section creates criminal penalties for wilful violation of the provisions of this Article.

B. Derivation

HEW Model Act, Section 47 (e); IJA/ABA Standards, Standards on Juvenile Records and Information Systems, 2.4.

C. Relationship to Existing Law

This is a new section.

"ARTICLE 49.

"TRANSFER TO SUPERIOR COURT.

" § 7A-557. Transfer of Jurisdiction of Juvenile to Superior Court. - The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile fourteen years of age or older to Superior Court if the juvenile was fourteen years of age at the time he allegedly committed an offense which would be a felony if committed by an adult. If the alleged felony constitutes a capital offense and the judge finds probable cause, the judge shall transfer the case to the Superior Court for trial as in the case of adults.

COMMENTARY

A. Summary

The juvenile court, after following the procedures outlined in this Article, may transfer a juvenile to Superior Court. A juvenile may be transferred only for an offense which would be a felony under the criminal law and such offense must have occurred when the child was at least fourteen years of age.

B. Derivation

This section is based on G.S. § 7A-280.

C. Relationship to Existing Law

The proposed section clarifies age provisions for transfer.

Transfer of a juvenile is provided for only when a felony was committed when he was at least fourteen years of age without regard to the juvenile's age when the juvenile was apprehended or when the petition was filed. Again, the age of the juvenile when the offense was alleged to have been committed governs.

The Committee considered and rejected compulsory transfer of certain very serious felonies, opting instead for the continued exercise of discretion by the judge. In addition, the Committee considered a proposal to formalize the transfer hearing by providing for motions to be made only by the prosecutor or the

defense attorney removing the judge from the initiation of the transfer. The Committee concluded that present procedures in this regard work quite well.

If the alleged felony constitutes a capital offense and probable cause is found, the case must be transferred.

" § 7A-558. Probable-Cause Hearing. - (1) The judge shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was fourteen years of age when the offense was allegedly committed unless the juvenile waives in writing his right to the hearing and stipulates to a finding of probable cause.

(2) At the probable-cause hearing,

- (a) A prosecutor must represent the State;
- (b) The juvenile may be represented by counsel in accordance with G.S. § 7A-544;
- (c) The juvenile may testify as a witness in his own behalf and call and examine other witnesses and produce other evidence in his behalf; and
- (d) Each witness must testify under oath or affirmation and be subject to cross-examination.

(3) The State must by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the juvenile committed it, except:

- (a) A report or copy of a report made by a physicist, chemist, firearms identification expert,

fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed by him in connection with the case in issue, when stated by that person in a report made by him, is admissible in evidence.

(b) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in another than the juvenile, lack of consent of the owner, possessor, or custodian of property to its taking or to the breaking or entering of premises, chain of custody, authenticity of signatures, and the existence and text of a particular ordinance or regulation of a governmental unit or agency.

(4) The juvenile's attorney shall have a right to examine any court or probation records considered by the court in exercising its discretion to transfer the case.

COMMENTARY

A. Summary

This section requires a probable-cause hearing in all cases when a juvenile 14 or over is alleged to have committed a felony unless there is a waiver.

Representation of counsel for the juvenile is not mandatory but the juvenile may not be transferred to Superior Court unless he were represented by counsel at the

hearing. A prosecutor must represent the State and the procedure is similar to that for adults.

The age requirement of fourteen years is mentioned again. The previous section mentioned age in connection with the transfer. This section mentions it in connection with the hearing. This would mean that a judge would not be required to conduct a probable cause hearing for a juvenile who was less than 14 years of age at the time a felony was allegedly committed.

B. Derivation

G.S. § 7A-280; G.S. § 15A-606; G.S. § 15A-611. See also In re Bullard et al, 22 N.C. App. 245 (1974). See also Kent v. United States, 383 U.S. 541.

C. Relationship to Existing Law

G.S. § 7A-280 requires a probable-cause hearing as mandated in this section; however, there is no mention of waiver. The waiver provision clarifies juvenile procedure.

Subsections (2) and (3) codify what is existing practice in some juvenile proceedings. G.S. § 7A-280 is silent as to procedure and does not require a prosecutor to represent the State. Some district attorneys are now assigning a prosecutor for transfer hearings so that the case will be prepared for trial in Superior Court if it

is transferred. With the seriousness of some juvenile felonies, this practice must be implemented statewide.

Subsection (4) is taken from G.S. § 7A-280.

In Kent v. United States, the United States Supreme Court, ruling on a case arising under the District of Columbia Juvenile Code, found that it was "... clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile," (383 U.S. 541 at 556). The juvenile, the court said, is entitled to a transfer hearing, representation by counsel who has full access to the child's social records, and a statement of reasons for transfer. This section and the next one conform to those requirements. In addition, G.S. § 7A-544 requires appointment of counsel prior to the conduct of the preliminary hearing in order to transfer the case to Superior Court for trial as in the case of adults.

" § 7A-559. Where Probable Cause Is Established. - (1) If probable cause is found, the prosecutor or the juvenile may move that the case be transferred to the Superior Court for trial as in the case of adults. If the alleged felony does not constitute a capital offense, the judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to Superior Court for trial as in the case of adults.

(2) If probable cause is not found, the judge shall dismiss the proceeding.

(3) Any order of transfer shall specify the reasons for transfer.

(4) A finding of no probable cause shall not preclude the judge from adjudicating the juvenile delinquent for the commission of a lesser included offense.

COMMENTARY

A. Summary

If probable cause is found in a felony that is not a capital offense, the judge may--but is not required to--transfer the case to Superior Court. He must dismiss the proceeding if no probable cause is found.

If transfer is made, the judge must set out his reasons for the transfer in the order.

Where no probable cause is found, the judge may find that the juvenile committed a lesser included offense.

B. Derivation

G.S. § 7A-280; Rules of Procedure Applicable to Children in the District Court. Rule 19; Breed v. Jones, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975); In re Bullard et al, 22 N.C. App. 245 (1974). See also G.S. § 15A-612.

C. Relationship to Existing Law

This section supplements current law as set out in G.S. § 7A-280. A provision is added to allow the prosecutor or counsel for the juvenile to move that the case be transferred; however, full discretion in making that decision rests with the judge as is now the case one probable cause is found and statutory (age/felony offense) requirements met.

G.S. § 7A-280 does not mandate dismissal upon a finding of no probable cause although that, in effect, is what occurs.

Providing reasons for transfer is to be distinguished from a finding of facts which, as pointed out in In re Bullard et al, 22 N.C. App. 245 (1974), is inappropriate upon a determination of probable cause.

" § 7A-560. Right to Bail; Detention. - Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. § 15A-553 and G.S. § 15A-534. Pending release under this Article, the judge may order that the juvenile be detained in a juvenile detention home or a separate section of a local jail as provided by G.S. § 7A-541.

COMMENTARY

A. Summary

The juvenile is given the right of bail afforded adults under G.S. § 15A-534. Pending his pretrial release, the juvenile may be detained as a juvenile in the discretion of the Superior Court Judge.

B. Derivation

This is a new section.

C. Relationship to Existing Law

This clarifies existing law and clearly places the responsibility of hearing matters related to pretrial release with the judge who ordered the transfer. It also affirms the juvenile's right to bail.

" § 7A-561. Double Jeopardy Prohibited. - Jeopardy attaches in an adjudicatory hearing when the judge begins to hear evidence.

COMMENTARY

A. Summary

The proposed section states that jeopardy attaches when the trier of the facts begins to hear evidence; and the juvenile cannot be tried again for the same offense in that or any other forum.

B. Derivation

This section was drafted following a study of federal statutes as well as case law.

C. Relationship to Existing Law

This does not change case law.

The U.S. Supreme Court in Breed v. Jones, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975), held that the Fifth Amendment protection against double jeopardy applies to juvenile delinquency proceedings where the child may be in danger of losing his freedom.

"ARTICLE 50. DISCOVERY.

" § 7A-562. Disclosure of Evidence by the Petitioner. -

(1) Statement of the Juvenile - Upon motion of a juvenile alleged to be delinquent, the judge shall order the petitioner:

(a) To permit the juvenile to inspect and copy any relevant written or recorded statements within the possession, custody, or control of the petitioner made by the juvenile or any other party charged in the same action; and

(b) To divulge, in written or recorded form, the substance of any oral statement made by the juvenile or any other party charged in the same action.

(2) Names of Witnesses - Upon motion of the juvenile, the judge shall order the petitioner to furnish the names of persons to be called as witnesses. A copy of the record of witnesses under the age of sixteen shall be provided by the petitioner to the juvenile upon his motion if accessible to the petitioner.

(3) Documents and Tangible Objects - Upon motion of the juvenile, the judge shall order the petitioner to permit the juvenile to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof:

(a) Which are within the possession, custody, or control of the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged; and

(b) Which are material to the preparation of his defense, are intended for use by the petitioner as evidence, and were obtained from or belong to the juvenile.

(4) Reports of Examinations and Tests - Upon motion of a juvenile, the judge shall order the petitioner to permit the juvenile to inspect and copy results of physical or mental examinations or of tests, measurements or experiments made in connection with the case, within the possession, custody, or control of the petitioner. In addition upon motion of a juvenile, the judge shall order the petitioner to permit the juvenile to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it or tests or experiments made in connection with the evidence in the case if it is available to the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged and if the petitioner intends to offer the evidence at trial.

(5) Except as provided in subsections (1) through (4), this Article does not require the production of reports, memoranda, or other internal documents made by the petitioner, law enforcement officers, or other persons acting on behalf

of the petitioner in connection with the investigation or prosecution of the case or of statements made by witnesses or the petitioner to anyone acting on behalf of the petitioner.

(6) Nothing in this section prohibits a petitioner from making voluntary disclosures in the interest of justice.

COMMENTARY

A. Summary

Upon motion of a juvenile, the judge must order the petitioner to permit the juvenile to inspect and copy any written statements made by the juvenile or a correspondent in the petitioner's possession, and order the petitioner to divulge in written form the substance of any oral statement by the juvenile or a correspondent.

Upon motion, the petitioner must give the juvenile the names of persons to be called as witnesses, and a copy of the juvenile record of witnesses under the age of sixteen, if accessible to the petitioner.

Upon motion of the juvenile, the judge must order the petitioner to permit the juvenile to look at and copy all books, photographs, recordings, tangible objects, etc. which are in the possession of the petitioner, the district attorney, or any law enforcement officer working on the case and which is intended for use by the petitioner as evidence or belongs to the juvenile.

Upon motion of a juvenile, the judge must order the petitioner to permit the juvenile to inspect and copy any reports of physical or mental examinations or tests or any experiments made in connection to the case, which is in the possession of the petitioner. Also, upon motion, the judge must order the petitioner to permit the juvenile to inspect and test any physical evidence or experiments as an exhibit in the case if it is also available to the petitioner, the district attorney, or any law enforcement officer investigating the case.

This article does not require production of memoranda or internal documents made by the petitioner, law enforcement officers or others acting for the petitioner. Nothing in this article prohibits a petitioner from voluntarily disclosing information in the interests of justice.

B. Derivation

G.S. § 15A-903.

C. Relationship to Existing Law

North Carolina, like most other jurisdictions, does not have any current statute concerning pretrial discovery in juvenile cases.

The history of discovery in judicial proceedings is relatively recent. Around 1940 most states began to move away from the "sporting theory of justice," Tiedman v. American Pigment Corp., 253 F. 2d 803-808 (4th Cir. 1958), with its emphasis on surprise as a trial tactic. Pretrial exchange of information, discovery, is designed to minimize confusion and maximize the efficiency of the court in determining the truth. The American Bar Association has acknowledged this goal:

"Quick wits may be the mark of the trial lawyer, but they are not always sufficient for the orderly exposition and testing of evidence, which is the purpose of a trial. Where planning is foreclosed by lack of information, as has long been the custom in much of criminal litigation, surprise and gamesmanship usually govern the conduct of the proceedings. The result is too often a general obfuscation of the issues." ABA Standards, Discovery at 31.

Pretrial discovery in juvenile cases, like in civil and criminal proceedings, will assist the parties in narrowing the issues and in ascertaining the facts of the cases. In delinquency proceedings, as in criminal cases, particularly when the juvenile is an indigent represented by appointed counsel, discovery offsets

the imbalance of investigative resources between the State and the juvenile.

Pretrial discovery may also serve to expedite trials. For example, discovery may eliminate the need for the court to grant continuances at trial. Continuances have had the harmful effect not only of delaying the final outcome of the trial and of creating a dilemma for the juvenile who is in detention during the trial, but also of jeopardizing the accuracy of the fact-finding process by increasing the likelihood that witnesses will be unavailable for the hearing or that witnesses will be unable to recall the facts clearly.

In addition, pretrial motion practice is aided by discovery. Since the Fourth and Fifth Amendments have been applied to delinquency proceedings, counsel will need to know whether property was seized from the juvenile, whether he confessed, and the circumstances surrounding any confession to determine whether constitutional challenges should be raised. In view of the unreliability and doubtful voluntariness of many juvenile confessions [See In re Gault, 387 U.S. 1, 45,53 (1967)], the need for access to such confessions and to information concerning interrogations may be more vital in delinquency cases than in criminal cases.

Also, to the extent that particular discovery rights are mandated by the Sixth Amendment right to counsel or Fourteenth Amendment due process, their application to delinquency proceedings may be necessary to meet constitutional requirements.

Finally, discovery is another step toward balancing the due process rights of the juvenile up to and through the adjudicatory stage of the proceedings with the interest of the State in caring for juveniles who need assistance or discipline and in protecting the community.

The Committee had some reservations about requiring the petitioner to furnish copies of the records of witnesses under sixteen to the juvenile. On its face, this would seem to negate the confidentiality of juvenile records and proceedings. On the other hand, the provision is qualified to require production "if the records are accessible to the petitioner."

The provision seems to be consistent with the holding of the United States Supreme Court in Davis v. Alaska, 39 L. Ed. 2d 347, 94 S. Ct. 1105 (1974).

Davis was convicted of grand larceny and burglary in Alaska. A crucial witness against him was Green, a seventeen-year-old, who was on probation by order of a juvenile court because he had burglarized two cabins. The trial court granted the state's motion

for a protective order prohibiting any reference to Green's prior juvenile record at Davis's trial.

The Alaska Supreme Court affirmed Davis's conviction on the ground that the defense had been able to make adequate cross-examination of Green in spite of the protective order.

Chief Justice Burger reversed and remanded on the ground that Davis's right to confrontation was paramount to the state's policy of protecting a juvenile. Davis's counsel was permitted to ask Green on cross-examination "whether he was biased," the Court said, but "was unable to make a record from which to argue why Green might have been biased or otherwise lack that degree of impartiality expected of a witness at trial."

" § 7A-563. Disclosure of Evidence by the Juvenile. -

(1) Names of Witnesses - Upon motion of the petitioner, the judge shall order the juvenile to furnish to the petitioner the names of persons to be called as witnesses.

(2) Documents and Tangible Objects - If the court grants any relief sought by the juvenile under G.S. § 7A-562, subsection (3), upon motion of the petitioner the judge shall order the juvenile to permit the petitioner to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof which are within the possession, custody, or control of the juvenile and which the juvenile intends to introduce in evidence.

(3) Reports of Examinations and Tests - If the court grants any relief sought by the juvenile under G.S. § 7A-562, subsection (4), upon motion of the petitioner, the judge shall order the juvenile to permit the petitioner to inspect and copy results of physical or mental examinations or of tests, measurements or experiments made in connection with the case within the possession and control of the juvenile which he intends to introduce in evidence or which were prepared by a witness whom he intends to call if the results relate to the witness's testimony. In addition, upon motion of a petitioner, the judge shall order the juvenile to permit the petitioner to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it

if the juvenile intends to offer the evidence or tests or experiments made in connection with the evidence in the case.

COMMENTARY

A. Summary

This section is related to G.S. § 7A-562, Disclosure of Evidence by the Petitioner, in that it provides the petitioner similar rights afforded the juvenile.

Upon motion of the petitioner, the court must order the juvenile to allow the petitioner to inspect and copy any books, photographs, recordings, tangible objects, etc. in his possession and intended as evidence at the hearing.

Upon motion of the petitioner, the court must order the juvenile to permit the petitioner to inspect and copy any reports of physical or mental examinations or of any experiments

made in connection with the case which are in his possession and are to be introduced as evidence. Also, upon motion, the court must order the juvenile to allow the petitioner to examine and test any physical evidence or experiments if he intends to offer such evidence.

B. Derivation

G.S. § 15A-905.

C. Relationship to Existing Law

This section is similar to the previous section in that it has no parallel in present North Carolina law. See Commentary G.S. § 7A-562.

" § 7A-564. Regulation of Discovery; Protective Orders. -

(1) Upon written motion of a party and a finding of good cause, the judge may at any time order that discovery or inspection be denied, restricted, or deferred.

(2) The judge may permit a party seeking relief under subsection (1) to submit supporting affidavits or statements to the court for in camera inspection. If thereafter, the judge enters an order granting relief under subsection (1), the material submitted in camera must be available to the Court of Appeals in the event of an appeal.

COMMENTARY

A. Summary

The court may at any time order that discovery be denied, restricted, or deferred upon written motion and a finding of good cause. The party making the motion may submit supporting statements to the court for private, in-chambers inspection. This material must be available to the appellate court in the event of an appeal.

B. Derivation

G.S. § 15A-908.

C. Relationship to Existing Law

This section does not have a counterpart in current North Carolina law. It is designed to allow the court to hear arguments that disclosure in a particular case should be denied or restricted. It speaks to the fact that in some instances disclosure of information could lead to the possibility of harm or intimidation of witnesses or interference of an on-going investigation. If these fears can be substantiated in a particular case, the court may deny or restrict discovery.

" § 7A-565. Continuing Duty to Disclose. - If a party, subject to compliance with an order issued pursuant to this Article, discovers additional evidence prior to or during the hearing or decides to use additional evidence, and if the evidence is or may be subject to discovery or inspection under this Article, he shall promptly notify the attorney for the other party of the existence of the additional evidence or of the name of each additional witness.

COMMENTARY

A. Summary

If a party discovers additional evidence prior to or during the hearing and the evidence is or may be subject to discovery under this Article, he must promptly notify the attorney for the other party of the existence of this evidence.

B. Derivation

G.S. § 15A-907.

C. Relationship to Existing Law

This section has no parallel in North Carolina juvenile law. It assures that the goals of the discovery provisions of G.S. § 7A-562 and § 7A-563 are not subverted by early disclosure of information prior to a full investigation in order to avoid disclosure of facts uncovered at a later date.

"ARTICLE 51.

"HEARING PROCEDURES.

" § 7A-566. Amendment of Petition. - The judge may permit a petition to be amended when the amendment does not change the nature of the offense alleged or the conditions upon which the petition is based. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations.

COMMENTARY

A. Summary

At the discretion of the court, a petition can be amended at any time as long as the amendment doesn't change the nature of the offense in a delinquency case or the conditions alleged in other cases.

B. Derivation

G.S. § 15A-922 (f).

C. Relationship to Existing Law

There is no current North Carolina law which specifically provides for the amendment of a juvenile petition once it has been filed.

" § 7A-567. Determination of Incapacity to Proceed; Evidence; Temporary Commitment; Temporary Orders. - The provisions of G.S. § 15A-1001, G.S. § 15A-1002, and G.S. § 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent.

COMMENTARY

A. Summary

This section allows the court to have the juvenile examined to determine his capacity to proceed. Examination may be by impartial medical experts appointed by the court or may be by state medical experts while the juvenile is committed for observation for a period not to exceed 60 days. This section also provides for the initiation of involuntary commitment proceedings where the juvenile is found to lack capacity to proceed.

B. Derivation

Conversations with William F. O'Connell, Special Deputy Attorney

General; See also In re Mikels, 31 N.C. App. 470 (1976) re. direct commitments.

C. Relationship to Existing Law

This is a new section. Some judges are currently committing juveniles for this purpose without statutory authority. This presents a problem for the hospital. This section is needed to insure a juvenile who is not capable of proceeding is not prosecuted until he is capable.

" § 7A-568. Adjudicatory Hearing. - The adjudicatory hearing shall be held in the district at such time and place as the Chief District Judge shall designate. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

COMMENTARY

A. Summary

The Chief District Judge shall designate the time and place of the adjudicatory hearings in the district and these hearings must be open if a motion is made by the juvenile for an open hearing.

B. Derivation

G.S. § 7A-285 and IJA/ABA Standards, Adjudication 6.1.

C. Relationship to Existing Law

The proposed section is similar to the first paragraph of G.S. § 7A-285. Whether the hearing is open to the public or not is left to the discretion of the judge as in G.S. § 7A-285; but under the proposed section, the juvenile is entitled to public trial if requested by the juvenile or his counsel.

The Committee was made aware of the holding in Oklahoma Publishing Co. v. District Court, 51 L. Ed. 2d 355 (1976), that an

order by the District Court prohibiting publication of the name or picture of a juvenile charged with delinquency as a result of a second degree murder abridges the free press guarantee of the First and Fourth Amendments. Oklahoma statutes provide that juvenile proceedings are to be held in private "unless specifically ordered by the judge to be conducted in public." (Okla. Stat. Ann. Tit. 10 § § 1111, 1125 (1976)). In this case there was no such order; however, members of the press were not asked to leave. The United States Supreme Court, in making its ruling, cited earlier opinions that "once a public hearing had been held, what transpired there could not be subject to prior restraint."

" § 7A-569. Participation of the Prosecutor. - A prosecutor from the District Attorney's office shall represent the State in all hearings.

COMMENTARY

A. Summary

A prosecutor from the district attorney's office must be assigned by the district attorney to represent the State in all adjudicatory, dispositional, custody and transfer hearings.

B. Derivation

This section is based on IJA/ABA Standards, Transfer Between Courts, 2.3; Adjudication, 1.2; and Dispositional Alternatives, 3.1.

C. Relationship to Existing Law

Current North Carolina law does not require that the District Attorney represent the interests of the State in juvenile proceedings, other than the 1971 Amendment to G.S. § 7A-61 which gives his office the duty of representing the State in cases in which the child is represented by counsel.

" § 7A-570. Conduct of Hearing. - (1) The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the judge shall protect the following rights of the juvenile and his parent to assure due process of law: the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right of discovery and all rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

COMMENTARY

A. Summary

In the adjudicatory hearing, the juvenile and his parent shall be assured due process of law including the right to written notice of the facts, the right to counsel, the right to confront and cross-examine witnesses, the right to discovery, the privilege against self-incrimination, and all rights given to adult offenders except the right to bail, the right of self-representation, and the right to trial by jury.

B. Derivation

G.S. § 7A-285.

C. Relationship to Existing Law

This section expands current law to insure discovery rights to all juveniles. Otherwise, it restates the provisions of G.S. § 7A-285.

" § 7A-571. Continuances. - The judge may continue at any time any case to allow additional factual evidence, social information or other information needed in the best interest of the juvenile or in the interest of justice.

COMMENTARY

A. Summary

A case may be continued by a judge prior to or during an adjudicatory hearing.

B. Derivation

G.S. § 7A-285.

C. Relationship to Existing Law

Some concern was expressed at allowing a case to be continued once the court had begun receiving evidence. The

judges, however, felt this provision was necessary to insure justice and noted that there are times when a witness cannot finish testifying (i.e., an officer may be called to Superior Court). The Committee concluded that in these cases, it should not be necessary for the court to declare a mistrial; continuance should be permitted.

" § 7A-572. Where Allegations of a Delinquent or Undisciplined Act are Admitted. - (1) A judge may accept an admission from a juvenile only after first addressing him personally and

- (a) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (b) Determining that he understands the nature of the charge;
- (c) Informing him that he has a right to deny the allegations;
- (d) Informing him that by his plea he waives his right to be confronted by the witnesses against him;
- (e) Determining that the juvenile, if represented by counsel, is satisfied with his representation; and
- (f) Informing him of the maximum possible sentence on the charge.

(2) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile personally, the judge shall determine whether there were any prior plea discussions, whether the parties have entered into any arrangement with respect to the plea and the terms thereof, and whether any improper pressure was exerted. The judge may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(3) The judge may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of the facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney.

COMMENTARY

A. Summary

A judge may not accept an admission from a juvenile without first informing him of his right to remain silent and that any statement he makes may be used against him. He must ascertain that the juvenile understands the nature of the charge and his right to deny the allegation. The juvenile must also be informed that by his plea, he waives his right to be confronted by the witnesses against him. The judge must determine that the juvenile is satisfied with his representation if represented by counsel and must inform the juvenile of the maximum punishment for the offense alleged.

The judge may not accept an admission without first determining that there is a factual basis for the admission. The information on the factual basis may come from the statement of facts either by the prosecutor and/or by the juvenile's attorney, a written statement by the juvenile, or sworn testimony.

B. Derivation

G.S. § 15A-1022; In Matter of Craig Allen Arthur, 27 N.C. App. 227 (1975); IJA/ABA Standards, Adjudication 3.2; Standard 1.4 of American Bar Association Standards for Criminal Justice: Pleas of Guilty (Approved Draft 1968); Rule 11, Federal Rules of Criminal Procedure; In re Chavis, 31 N.C. App. 579 (1976); In Matter of Johnson, 232 S.E. 2d 486 (March 2, 1977).

C. Relationship to Existing Law

This section codifies North Carolina case law which speaks of "fundamental fairness." The extent to which juveniles are entitled to the same procedural protections as adults when an admission is made in court is questionable as a result of a 1978 case, Beasley v. Illinois. The United States Supreme Court refused to hear a case involving a ruling by the Illinois Supreme Court upholding the state court practice of accepting admissions of guilt without explaining charges or determining if the admission

is made intelligently and voluntarily. The case involved two juveniles who were confined after in-court admissions to burglary and robbery.

The North Carolina Court of Appeals, however, has required that a transcript of plea be made

a part of the record in delinquency proceedings (See In Matter of Johnson; In re Chavis). The proposed section insures that juveniles have the same procedural protections as adults upon making an in-court admission.

" § 7A-573. Rules of Evidence. - (1) Where delinquent or undisciplined behavior is alleged and the allegation is denied, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the intake counselor during the preliminary inquiry and evaluation process shall be admissible against the juvenile prior to the dispositional hearing.

(2) Where the juvenile is alleged to be abused, neglected or dependent, the rules of evidence in civil cases shall apply.

COMMENTARY

A. Summary

If the allegation is denied, the court will hear evidence in accordance with rules of evidence applicable to criminal cases where the juvenile is alleged to be delinquent or undisciplined and civil cases where he is alleged to be abused, neglected or dependent. A statement made by the juvenile to the intake counselor during the

intake process shall not be admissible against him until after adjudication is completed.

B. Derivation.

IJA/ABA Standards, Adjudication 4.2; Rule 25 of the Model Rules for Juvenile Courts; HEW Model Acts, Sections 28 and 32.

C. Relationship to Existing Law

This section reflects both interpretation of case law and traditional practices.

" § 7A-574. Quantum of Proof in Adjudicatory Hearing. -

The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt. The allegations in a petition alleging abuse, neglect, dependence, or undisciplined behavior shall be proved by clear and convincing evidence.

COMMENTARY

A. Summary

The trier of facts must be satisfied beyond a reasonable doubt in delinquency proceedings and by clear and convincing evidence in proceedings wherein abuse, neglect, dependence, or undisciplined behavior have been alleged.

B. Derivation

In re Winship, 397 U.S. 285 (1969); In re Walker, 282 N.C. 28 (1972); In re Burrus 275 N.C. 517 (1969); IJA/ABA Standards, Adjudication 4.3.

C. Relationship to Existing Law

This section codifies existing case law as well as inferences arising from case holdings.

" § 7A-575. Record of Proceedings. - All adjudicatory and dispositional hearings and hearings on transfer to Superior Court shall be recorded by stenographic notes or by electronic or mechanical means. The judge may order that other hearings be recorded.

COMMENTARY

A. Summary

All adjudicatory, dispositional, and transfer hearings must be recorded by stenographic notes or by electronic or mechanical means. The judge may order other hearings (i.e., custody, emancipation, termination of parental rights, etc.).

B. Derivation

HEW Model Acts, Section 29.

C. Relationship to Existing Law

Present North Carolina G.S. § 7A-285 dictates that reporting of juvenile cases be governed by G.S. § 7A-198, which regulates

reporting of civil cases. That statute requires that court reporting personnel shall be used if available. If not available, the Administrative Office of the Courts shall provide electronic or other mechanical devices for recording the proceedings if such devices are requested by the Chief District Judge. The statute also allows waiver of reporting with the consent of all parties.

The proposed statute would require some record - either recorded by mechanical means or stenographic notes - for all adjudicatory, dispositional, or transfer hearings.

" § 7A-576. Adjudication. - If the judge finds that the allegations in the petition have been proved as provided in G.S. § 7A-574, he shall so state. If the judge finds that the allegations have not been proven, he shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody.

COMMENTARY

A. Summary

A juvenile petition shall be dismissed and may not be filed again if the court finds that the allegations have not been proven and the juvenile shall be released from detention or shelter care.

B. Derivation

This section is derived from G.S. § 7A-285 and applicable case law; In Matter of Drakeford, 230 S.E. 2d 779, 32 N.C. App. 113 (1977).

C. Relationship to Existing Law

Under civil practice and procedure, the principle of res judicata precludes bringing another case following trial on the merits. The constitutional prohibition against double jeopardy stated in G.S. § 7A-561 requires dismissal as provided in this section if the allegations have not been proven. This section clarifies the language of G.S. § 7A-285 to prohibit the filing of another petition where the allegations have not been proven.

" § 7A-577. Legal Effect of Adjudication of Delinquency. -

An adjudication that a juvenile is delinquent or commitment of a juvenile to the Division of Institutional Services shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights.

COMMENTARY

A. Summary

An adjudication of delinquency or commitment to the Division of Institutional Services shall not be considered a conviction of a criminal offense or forfeit any of the juvenile's citizenship rights such as the right to vote or hold office. Any juvenile transferred to Superior Court for trial as an adult, who is convicted of a felony and committed to the Department of Correction has all citizenship rights automatically restored upon his final discharge

under G.S. § 13-1.

B. Derivation

This section is taken from current G.S. § 134A-23.

C. Relationship to Existing Law

The proposed section does not change current law.

" § 7A-578. Predisposition Investigation and Report. -

The judge shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the judge prior to the completion of the adjudicatory hearing. The judge shall permit the juvenile to inspect any predisposition report to be considered by him in making his disposition. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and his parent, guardian, or custodian at the dispositional hearing. The judge may order counsel not to disclose parts of the report to the juvenile's parent, guardian, or custodian if the judge finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information.

COMMENTARY

A. Summary

Upon receiving the social, medical, psychiatric, psychological and educational information needed to develop a disposition, the court shall proceed to the dispositional hearing. This information may be provided by, but is not limited to, the report of the intake counselor. No report shall be considered by the court before

completion of the adjudicatory hearing. Any predisposition report considered in making the disposition may be inspected by the juvenile and his parent or guardian; and they shall have the opportunity to offer evidence in rebuttal at the dispositional hearing. Under limited circumstances, the court may restrict access to the report; however, counsel would have access prior to the

conduct of the dispositional hearing under all circumstances.

B. Derivation

G.S. § 7A-285 and G.S. § 7A-286; HEW Model Acts, Section 32(e).

C. Relationship to Existing Law

Present statutes permit but do not require the judge to delay disposition until information en-

abling him to make a more intelligent disposition can be obtained. This section allows time for the court to obtain information needed to proceed to disposition. It codifies existing practice that the court may not receive any form of social information prior to the dispositional hearing. It further mandates current practice that any report reviewed by the court shall be available to the juvenile's counsel for inspection, and the opportunity for rebuttal shall be afforded.

" § 7A-579. Dispositional Hearing. - The dispositional hearing may be informal, and the judge may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and his parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the judge concerning the disposition they believe to be in the best interest of the juvenile.

COMMENTARY

A. Summary

The dispositional hearing is an informal proceeding, allowing the court to consider written reports or other evidence in determining the best disposition. The section also assures that the juvenile and his parent, guardian, or custodian have a chance to present evidence and provide input for the court's dispositional order.

B. Derivation

This section is based on G.S. § 7A-285.

C. Relationship to Existing Law

The proposed section is identical to wording in G.S. § 7A-285 in the last of the fourth paragraph and the fifth paragraph. They have been pulled together into a separate smaller section for clarity and easy reference.

"ARTICLE 52. DISPOSITIONS.

" § 7A-580. Purpose. - The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and his family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the judge should arrange for appropriate community-level services to be provided to the juvenile and his family in order to strengthen the home situation.

In choosing among statutorily permissible dispositions for a delinquent juvenile, the judge shall select the least restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile. A juvenile should not be committed to training school or to any other institution if he can be helped through community-level resources.

COMMENTARY

A. Summary

The purpose of a disposition is to meet the needs of the child and the objectives of the State. Unless the situation will not allow the child to remain with his family, the first approach should focus on working with the child and his family where community resources can assist in the program. The judge should first attempt to stabilize the home situation.

In choosing a disposition for a delinquent juvenile, the court should select the least restrictive type and length of disposition appropriate to the seriousness of the offense. The court should also consider the culpability indicated by the particular case and the age and prior record, if any, of the juvenile. A juvenile should not be committed to training school if he can receive help in his community.

B. Derivation

This section is based on current North Carolina G.S. § 7A-286 (4), IJA/ABA Standards, Dispositions, 2.1; and the National Institute for Juvenile Justice and Delinquency Prevention, Report of the Advisory Committee on Standards for the Administration of Juvenile Justice, Standard 3.182.

C. Relationship to Existing Law

Under present law, the judge should choose "the disposition which provides for the protection, treatment, rehabilitation, or correction of the child after considering the factual evidence, the needs of the child, and the available resources"

(G.S. § 7A-286). The Committee has retained and endorses that part of § 7A-286 which encourages treatment involving the whole family. It is the feeling of the Committee that the aim of the juvenile court is twofold: to help each juvenile become a responsible, healthy citizen and to protect the community. While these interests sometimes conflict, in the long run they frequently complement each other. This section articulates the principle that a juvenile is more likely to become a responsible citizen in a less restrictive situation provided that this is balanced by the safety of the public.

The proposed section is intended to set the tone for the judges' dispositional decision. The latter part is a new section, but the principle is not inconsistent with the purpose of the juvenile court contained in G.S. § 7A-277. The section is also in agreement with the language of Mr. Justice Brennan in his concurring opinion in Furman v. Georgia, 408 U.S. 238 (1972):

"... a severe punishment must not be excessive. A punishment is excessive under this principle if it is unnecessary. The infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is

inflicted... the punishment inflicted is unnecessary and therefore excessive." (408 U.S. at 279)

" § 7A-581. Dispositional Alternatives for the Delinquent, Undisciplined, Abused, Neglected, or Dependent Juvenile. - The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any two of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

(a) Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

(b) Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

(c) Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. Any Department of Social Services in whose custody or physical custody a juvenile is placed shall have the authority to arrange for and provide medical care as needed for such juvenile.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, or psychologist as may be needed for the judge to determine the needs of the juvenile. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, he shall allow the parent or other responsible persons to arrange for care. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of such care pursuant to G.S. § 7A-584. If the judge finds the parent is unable to pay the cost of care, the judge may charge the cost to the county. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is

mentally retarded the judge shall refer him to the area mental health director or local mental health director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health director or local mental health director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet his needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness,

indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

COMMENTARY

A. Summary

The court may select any of the following dispositions for the juvenile found to be delinquent, undisciplined, abused, neglected, or dependent:

(1) Dismiss the case if the child is not in need of more adequate supervision or continue the case so the family can work out a solution to the problem.

(2) Place the child in custody of a parent, relative, private agency or others that the court has determined are suitable for the supervision by a protective services worker or court counselor.

(3) Place the child in custody of the Department of Social Services in the county of his residence. If the child is not from North Carolina, he may be temporarily placed in the custody of the county Department of Social Services where he is found.

(4) Order an examination by a physician, psychologist, or psychiatrist. If the child is in need of care or treatment, the court may allow or order such treatment. If the judge finds it necessary, he may order the child evaluated by the local or area mental health director, but he may not commit the child to a mental health hospital or retardation center unless the parents consent or the only alternative is commitment to training school.

If a mental health hospital discharges a committed juvenile, it must notify the judge of its reasons including a statement of the type of treatment that the juvenile needs and where he may receive it.

B. Derivation

This section is based primarily on G.S. § 7A-286 (2); IJA/ABA Standards, Standards Relating to Abuse and Neglect, 7.1; and G.S. § 7A-286 (6).

C. Relationship to Existing Law

The proposed section allows essentially the same dispositional alternatives currently authorized by North Carolina law. However, it attempts to generate information which will allow the judge to evaluate mental health programs available and to assist agencies in determining what programs should be created to serve those juveniles who currently fall through the gaps in treatment.

" § 7A-582. Dispositional Alternatives for Delinquent or Undisciplined Juvenile. - In the case of any juvenile who is delinquent or undisciplined, the judge may:

(1) Continue the case for no more than six months in order to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision, through placement in a private or specialized school or agency, through placement with a relative, or through some other plan approved by the court;

(2) Place the juvenile under the protective supervision of a court counselor for no more than one year so that the court counselor may assist the juvenile in securing social, medical, and educational services and may work with the family as a unit to insure the juvenile is provided proper supervision and care;

(3) Excuse the juvenile from compliance with the compulsory school attendance law when the judge finds that suitable alternative plans can be arranged by the family through other community resources for one of the following: an education related to the needs or abilities of the juvenile including vocational education or special education; a suitable plan of supervision or placement; or some other plan that the judge finds to be in the best interest of the juvenile.

COMMENTARY

A. Summary

When a juvenile is adjudicated to be delinquent or undisciplined, the judge may:

(1) Continue the case to allow the family a chance to meet the needs of the juvenile through more adequate supervision or some other approved plan;

(2) Place the juvenile under protective supervision for no more than one year subject to such conditions as the judge finds necessary, under the supervision of a court counselor;

(3) Excuse the juvenile from compliance with the compulsory school attendance law, provided he finds suitable alternative plans, such as vocational education or a plan of supervision.

B. Derivation

This section is based on G.S. § 7A-286 (4).

C. Relationship to Existing Law

The proposed section both expands the dispositional options and clarifies some that are already available.

Subsection (1) is taken from G.S. § 7A-286 (4) (a) but limits a continuance to six months.

Subsection (2) is based on St. Louis's National Juvenile Law Center Model Code and provides for protective supervision which in cases of undisciplined behavior may be more desirable than probation since the ultimate sanction of training schools is not allowed for undisciplined juveniles who violate probation conditions by committing an undisciplined act.

Subsection (3) is taken from G.S. § 7A-286 (4) (c).

" § 7A-583. Dispositional Alternatives for Delinquent Juvenile. - In the case of any juvenile who is delinquent, the judge may:

(1) Suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by him and specified in the dispositional order. The conditions shall not exceed the maximum criminal sanction permissible for the offense;

(2) Require restitution, full or partial, payable within a twelve month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The judge may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the judge shall not require the juvenile to make restitution if the juvenile satisfies the court that he does not have, and could not reasonably acquire, the means to make restitution;

(3) Impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult;

(4) Order the juvenile to perform supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense and in no event may the obligation to work exceed twelve months;

(5) Order the juvenile to a supervised day program, requiring him to be present at a specified place for all or part of every day or of certain days. The judge also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision;

(6) Order the juvenile to a community-based program of academic or vocational education or to a professional residential or nonresidential treatment program. Participation in the programs shall not exceed twelve months;

(7) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to:

(a) Night custody for no more than five nights;

(b) Weekend custody for no more than two weekends;

(8) Place the juvenile on probation under the supervision of a court counselor. The judge shall specify conditions of probation that are related to the needs of the juvenile including:

- (a) That the juvenile shall remain on good behavior and not violate any laws;
- (b) That the juvenile attend school regularly;
- (c) That the juvenile not associate with specified persons or be in specified places;
- (d) That the juvenile report to a court counselor as often as required by a court counselor;
- (e) That the juvenile make specified financial restitution or pay a fine in accordance with subsections (2) and (3);
- (f) That the juvenile be employed regularly if not attending school.

An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the judge may extend it for an additional period of one year after a hearing if he finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile:

(9) Order that the juvenile shall not be licensed to operate a motor vehicle in the State of North Carolina for as long as the court retains jurisdiction over the juvenile or for any shorter period of time;

(10) Commit the juvenile to the Division of Institutional Services in accordance with G.S. § 7A-586.

COMMENTARY

A. Summary

When a juvenile is adjudicated to be delinquent, the judge may:

(1) Suspend imposing a more severe disposition with the provision that the juvenile meet certain conditions. Such conditions shall not exceed the maximum criminal sanction permissible for the offense;

(2) Require full or partial payment, within a twelve month period, to those who have suffered damage as a result of the offense. The court may determine the terms of the restitution and shall not require the juvenile to pay the restitution if he satisfies the court that he does not have or could not acquire the means to pay it;

(3) Impose a fine related to the seriousness of the offense and the juvenile's ability to pay such fine. The fine shall not exceed the maximum fine for the offense by an adult;

(4) Order the juvenile to perform supervised community service specifying the nature of the work and the number of hours required. The duty to work may not exceed twelve months and must be related to the seriousness of the offense.

(5) Order the juvenile to a supervised day program;

(6) Order the juvenile to participate in a community-based program. The duration shall not exceed the maximum time permissible for the offense by an adult. This provision would not violate federal funding

guidelines or licensing guidelines in that the court would not be ordering the community-based program to accept the child;

(7) Impose intermittent confinement in an approved detention facility which includes night custody for no more than five nights or custody for two weekends;

(8) Place the juvenile on probation for not more than one year subject to conditions of probation specified by the court;

(9) Delay the juvenile's obtaining a driver's license;

(10) Commit the juvenile to the Division of Institutional Services.

B. Derivation

This section is based on G.S. § 7A-286 and G.S. § 110-22; also IJA/ABA Standards, Dispositions, 3.2A, 3.2B.1., 3.2B.2., 3.2B.3., 3.2C.2., 3.2D., 3.3D., and 5.3; National Juvenile Law Center Model Code, Section 17 (2) (c).

C. Relationship to Existing Law

Subsection (1) is based on IJA/ABA Dispositions Standard 3.2A. It is designed to allow the juvenile interested in participation in a treatment program or vocational training, making restitution to the victim, or in performing community work to formulate and carry through plans for such activities. At the same time, the juvenile is aware of the seriousness of his conduct and the consequences of

failure to comply with court ordered conditions.

Subsections (2), (3), and (8) are based on G.S. § 110-22 but have been expanded to more clearly define the procedures and limits involved.

Subsections (4), (5), and (6) are based on IJA/ABA recommendations and are designed as alternatives to more restrictive dispositions. They are intended to assure the protection of the community by keeping the juvenile under closer supervision while allowing the juvenile the opportunity to

acquire education, practical skills, and a sense of responsibility and self-worth.

Subsection (9) is a new section.

Subsection (10) is taken from G.S. § 7A-286 (4).

" § 7A-584. Authority over Parents of Juvenile Adjudicated As Delinquent, Undisciplined, Abused, Neglected, or Dependent. -

(1) If the judge orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. § 7A-581 (3), the judge may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(2) The judge may order the parent to provide transportation for a juvenile to keep an appointment with a court counselor.

(3) The judge may order the parent's participation in an evaluation or diagnostic process.

(4) The judge may order the parent's participation in any treatment program recommended by a licensed psychologist or psychiatrist.

(5) Whenever legal custody of a juvenile is vested in someone other than his parent, after due notice to the parent

and after a hearing, the judge may order that the parent pay a reasonable sum that will cover in whole or in part the support of the juvenile after the order is entered. If the judge places a juvenile in the custody of a county Department of Social Services and if the judge finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county Department of Social Services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(6) Failure of a parent who is personally served to participate in or comply with subsections (1) through (5) may result in a civil proceeding for contempt. A parent's wilful failure or refusal to participate in or comply with subsections (1) through (5) may also result in an order for contempt being filed, which order shall have the effect of a civil judgment.

(7) Information received from a parent by a physician, psychiatrist, psychologist, or other therapist pursuant to this section is a privileged communication subject to waiver by the parent but not subject to disclosure to the court over objection of the parent. Information received from a juvenile by a physician, psychiatrist, psychologist, or other therapist pursuant to this section is not a privileged communication and is subject to disclosure to the judge. A written report of diagnosis, prognosis, and recommendation for a juvenile prepared pursuant to this section is subject to disclosure to the judge

notwithstanding that the report is based in part on conclusions arising out of privileged communications from a parent. The report shall not set out the specific information or communication received by the writer from a parent on which the conclusions are based. The report shall be admissible in evidence but the right of a juvenile or a parent to confront and cross-examine witnesses shall not be denied.

COMMENTARY

A. Summary

If the judge orders treatment for a juvenile by a physician or other professional person, he may order the parents to pay the cost of the treatment.

The court may order the parents to provide transportation for the juvenile to see the court counselors.

The court may order the parents to receive treatment in any program recommended by a licensed psychologist or psychiatrist.

Whenever a child is in the legal custody of someone other than his parents, after notice to the parents and a hearing, the court may order the parents to pay part or all of the support of the child. The court may proceed against the parents for contempt if they refuse to pay this support. The county shall pay for the cost if the court finds the parents are unable to do so.

Information received by a psychologist or psychiatrist is privileged and may not be disclosed without the consent of that parent. Information received from a child, however, must be disclosed to the court upon order of the court.

The court may issue an order for contempt if the parents fail to comply with any of the above.

B. Derivation

This section is based on G.S. § 7A-286 and HEW Model Acts, Section 43.

C. Relationship to Existing Law

The proposed section has its basis in current North Carolina law but goes further in giving the court authority to require a child's parents to accept their responsibilities when their child appears in court.

Subsection (1) of the proposed statute is based on G.S. § 7A-286 (6).

Subsections (2), (3), and (4) reflect the belief of the Committee that in many instances the cooperation of the whole family is essential to the resolution of whatever problem brought the child to the attention of the court. These subsections allow the judge to exercise discretion to order the involvement of the parents.

Subsection (5) is based on G.S. § 7A-286 (2) and Section 43 of HEW Model Acts.

This section sets out criteria with regard to the disclosure of information given by a parent or a child to a licensed psychologist or psychiatrist.

The court will be able to rely on its contempt powers to enforce orders under this section, or the court may file an order which shall have the effect of a civil judgment.

" § 7A-585. Dispositional Order. - The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

COMMENTARY

A. Summary

The court order shall be in writing in all cases and shall include findings of fact and conclusions of law. The judge shall state orally and in the written order the precise terms of the disposition. This must include the nature and length of the

disposition and the person or agency who is responsible for carrying it out.

B. Derivation

This section is based on G.S. § 7A-285.

C. Relationship to Existing Law

The proposed section is similar to existing law. It attempts to assure that all necessary information is contained in the dispositional order so that all parties

involved fully understand the outcome of the proceedings and their respective responsibilities.

" § 7A-586. Commitment of a Delinquent Juvenile to the Division of Institutional Services. - (1) A delinquent juvenile above ten years of age may be committed to the Division of Institutional Services for placement in one of the residential facilities operated by the Division if the judge finds that the alternatives to commitment as contained in G.S. § 7A-583 have been attempted unsuccessfully or are inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community.

(2) Commitment shall be for:

- (a) An indefinite term not to exceed the eighteenth birthday of the juvenile; or
- (b) A definite term not to exceed two years if the judge finds that the juvenile is fourteen years of age, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a residential facility operated by the Division of Institutional Services. The Division may reduce the duration of the definite commitment by an amount not to exceed 25 percent if the juvenile has not com-

mitted any major infractions of the regulations of any facility to which he is assigned, and the Division of Institutional Services may move for a reduction of more than 25 percent pursuant to G.S. § 7A-593.

(3) In no event shall commitment be for a period of time in excess of that period for which an adult could be committed.

(4) The Chief Court Counselor shall have the responsibility for transporting the juvenile to the residential facility designated by the Division of Institutional Services. The juvenile shall be accompanied to the residential facility by a person of the same sex.

(5) The Division of Institutional Services shall accept all juveniles who have been committed for delinquency if the Assistant Director finds that the criteria specified in this section have been met. A commitment order accompanied by information requested by the Assistant Director shall be forwarded to the Division. The Assistant Director shall place the juvenile in the residential facility that would best provide for his needs and shall notify the committing court. The Assistant Director may transfer a committed juvenile to any residential facility operated by the Division.

(6) When the judge commits a juvenile to the Division of Institutional Services, the Assistant Director shall prepare a plan for care or treatment within fifteen days after assuming custody of the juvenile.

(7) Commitment of a juvenile to the Division of Institutional Services neither terminates the court's continuing jurisdiction rights over the juvenile and his parent or guardian nor transfers legal custody to the Division.

COMMENTARY

A. Summary

Subsections (1) and (2) give the court the authority to commit a juvenile over 10 years of age to the Division of Institutional Services for a definite or indefinite period provided other alternatives are inappropriate. The court must also find that the juvenile's behavior poses a threat to public safety. A definite commitment can only be ordered if the juvenile meets three specific criteria. The Division may reduce a definite commitment by no more than 25 percent. These sections would allow for commitment of a juvenile who has been adjudicated delinquent and has violated the terms of his probation by an undisciplined act, but would not allow for commitment of an undisciplined juvenile who has violated the terms of his probation by an undisciplined act as commitment is allowed for delinquents only.

Subsection (3) limits the duration of a disposition to the period of time that an adult could be sentenced for the same conduct.

Subsection (4) establishes the responsibility for transportation of a committed delinquent to a training school.

Subsection (5) requires that the training schools under the Office of Juvenile Justice accept juveniles where commitment criteria have been met. It sets out the authority of the Division with regard to assignment to a particular training school.

Subsection (6) requires the Division to prepare a treatment plan for a committed juvenile.

Subsection (7) provides that commitment of a juvenile to the legal custody of the Division does not terminate the court's continuing jurisdiction over the child and his parent or guardian, and does not affect legal custody over the child. If the juvenile is in the custody of the Department of Social Services when he is committed to training school, he is still in their custody when he returns. The custody has been simply interrupted as has been the custody of a parent.

B. Derivation

This section is based on current G.S. § 7A-286 (5); G.S. § 134A-18; G.S. § 134A-19; G.S. § 134A-20; and Oregon Statutes 419.507 (2) (3) and (f).

C. Relationship to Existing Law

Subsections (1) and (2) are based on G.S. § 7A-286 (5). However, the proposed subsections would limit commitment to the Division of Institutional Services to juveniles above ten years of age. The proposed subsections would also allow the court to impose a determinate sentence which could only be modified by order of the court. The Division is, however, given the option of a 25% reduction in time as an incentive for the child to obey the rules and regulations at any facility to which he is assigned.

Subsection (3) is a new section.

Subsection (4) is based on G.S. § 134A-19.

Subsection (5) is based on G.S. § 134A-18.

Subsection (6) is based on G.S. § 134A-20.

Subsection (7) is a new section designed to clarify responsibilities with respect to a juvenile committed to the Division of Institutional Services.

The Committee considered requiring the Division of Institutional Services to send a copy of the treatment plan to the committing court; however, the costs of notification each time the plan was modified seemed prohibitive. The fact that a judge may request a copy of a treatment plan at any time was deemed sufficient.

" § 7A-587. Transfer Authority of Governor. - The Governor may order transfer of any person less than eighteen years of age from any jail, detention facility, training school, or penal facility to any other of these institutions in appropriate circumstances. Prior to ordering a transfer, the Governor shall consult with appropriate officials of the juvenile and adult departments concerning the feasibility of transfer in terms of available space, staff, and suitability of program.

Transfer by the Governor of an inmate, committed to the Department of Correction, to a residential program operated by the Division of Institutional Services shall not affect the duration of the sentence imposed or divest the probation-parole officer of his responsibility to supervise the inmate on release. Transfer by the Governor of a juvenile, committed to the Division of Institutional Services, to a facility of the Department of Correction shall not affect the conditions or duration of the dispositional order or divest the court counselor of his responsibility to supervise the juvenile on conditional release.

COMMENTARY

A. Summary

The Governor may transfer any juvenile under 18 from any jail or other state facility to any other state facility, after consultation concerning available space, staff, and program suitability. Regardless of transfers, the juvenile court counselor has the aftercare

responsibility for those juveniles committed by the juvenile court. The adult probation-parole officer has the responsibility of supervision for those juveniles committed by Superior Court.

B. Derivation

This section is taken from current G.S. § 134A-27.

C. Relationship to Existing Law

This expands the Governor's authority under current law which only allows transfer from an adult institution to a juvenile facility. This section also clarifies super-

visory responsibilities of a juvenile transferred from an adult institution to a juvenile facility or vice versa.

The Committee did consider the constitutionality of transferring a juvenile to a penal institution without providing him with all of the rights afforded adults.

" § 7A-588. Prerelease Planning. - The Assistant Director of the Division of Institutional Services shall be responsible for evaluation of the progress of each juvenile at least once every six months as long as the juvenile remains in the care of the Division. If the Assistant Director determines that a juvenile is ready for release, he shall initiate a prerelease planning process. The prerelease planning process shall be defined by rules and regulations of the Office of Juvenile Justice, but shall include the following:

(1) Written notification to the judge who ordered commitment;

(2) A prerelease planning conference shall be held involving as many as possible of the following: the juvenile, his parent, court counselors who have supervised the juvenile on probation or will supervise him on aftercare, and staff of the facility that found the juvenile ready for release. The prerelease planning conference shall include personal contact and evaluation rather than telephonic notification.

COMMENTARY

A. Summary

The Division of Institutional Services shall be responsible for evaluation of each juvenile at least once every six months. If the Division

determines that the juvenile is ready for release, the Division shall start a prerelease planning process with the parent and

committing court, which shall include written notice to the committing court and a conference involving personal contact among the juvenile, his parent, staff of the committing court, and staff from the institution or program to which the juvenile is committed.

B. Derivation

This section is based on current G.S. § 134A-31.

C. Relationship to Existing Law

The proposed section is very similar to current G.S. § 134A-31.

The major change is a requirement that the Division of Institutional Services must notify the court in writing before they conduct the prerelease planning conference. The section also requires that the conference involve personal contact and not just telephone calls.

Also G.S. § 134A-31 (3) has been dropped, leaving guidelines for planning in this area to the Office of Juvenile Justice as an administrative responsibility.

" § 7A-589. Conditional Release and Final Discharge. - The Division of Institutional Services shall release a juvenile either by conditional release or by final discharge. The decision as to which type of release is appropriate shall be made by the Assistant Director based on the needs of the juvenile and the best interests of the State under rules and regulations governing release which shall be promulgated by the Office of Juvenile Justice, according to the following guidelines:

(1) Conditional release is appropriate for a juvenile needing supervision after leaving the institution. As part of the prerelease planning process, the terms of conditional release shall be set out in writing and a copy given to the juvenile, his parent, the committing court, and the court counselor who will provide aftercare supervision.

(2) Final discharge is appropriate when the juvenile does not require supervision or is eighteen years of age.

COMMENTARY

A. Summary

The Division of Institutional Services may release a juvenile by conditional release or final discharge, based on the needs of the child and best interests of the state. Rules and regulations concerning this decision shall be formulated by the Office of Juvenile Justice. Conditional release should be used if the juvenile needs supervision after leaving an institution.

Final discharge should be used when the juvenile does not need supervision or is 18 years of age.

B. Derivation

This section is taken from current G.S. § 134A-32.

C. Relationship to Existing Law

The proposed section would not change present law.

" § 7A-590. Revocation of Conditional Release. - If a juvenile does not conform to the terms of his conditional release, the court counselor providing aftercare supervision may make a motion for review in the court in the district where the juvenile has been residing during aftercare supervision. The judge shall hold a hearing to determine whether there has been a violation. With respect to any hearing pursuant to this section, the juvenile:

(1) Shall have reasonable notice in writing of the nature and content of the allegations in the petition, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of his conditional release to the extent that his conditional release should be revoked.

(2) Shall be permitted to be represented by an attorney at the hearing.

(3) Shall have the right to confront and cross-examine any persons who have made allegations against him.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of his contentions. A record of the proceeding shall be made and preserved in the juvenile's record.

If the judge determines that the juvenile has violated the terms of his conditional release, the judge may revoke the

conditional release or make any other disposition authorized by this Act.

If the judge revokes the conditional release, the Chief Court Counselor shall have the responsibility for returning the juvenile to the facility specified by the Division of Institutional Services.

COMMENTARY

A. Summary

If a juvenile on conditional release does not conform to the conditions of his release, a motion for review may be made in the court in the district where the juvenile has been residing. The court shall hold a hearing taking care to protect the juvenile's due process rights, to determine whether there has been a violation. If the court determines that the juvenile has violated the terms of his conditional release, the court may revoke his conditional release or make any other disposition authorized by statute in the best interests of the juvenile. If conditional release is revoked, the Chief

Court Counselor shall make arrangements for the juvenile's return to the Division of Institutional Services.

B. Derivation

This section is taken from current G.S. § 134A-33 and G.S. § 7A-286.1.

C. Relationship to Existing Law

The proposed section would not change present law.

" § 7A-591. Review of Order Transferring Custody. - In any case where the judge removes custody from a parent or person standing in loco parentis because of neglect or abuse, the juvenile shall not be returned to said parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.

In any case where custody is removed from a parent, the judge shall conduct periodic reviews at intervals not exceeding six months from the date entered to determine if the needs of the juvenile are being met and if the placement is in the juvenile's best interests. The Clerk of Superior Court shall maintain a file for the specific purpose of calendaring the case at the next session of court scheduled for the hearing of juvenile matters following the six months. Notification shall be sent to all parties by the Clerk at least fifteen days prior to the hearing.

The judge, after making findings of fact, shall enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

COMMENTARY

A. Summary

Once custody has been removed from a parent as a result of neglect or abuse, the juvenile cannot be returned until the judge finds facts which show that the child will receive proper care.

If custody is removed from a parent, that decision must be reviewed every six months, at a hearing after notice to all parties.

B. Derivation

This section is based on G.S. § 7A-286 (2).

C. Relationship to Existing Law

G.S. § 7A-286 (2) provides for a review each six months the first year and annually thereafter. This section requires reviews every six months throughout the period when custody is removed.

Current law provides no procedure for calendaring the review. This section clarifies the responsibilities in that regard.

" § 7A-592. Probation Review. - The judge may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Act and only after there is notice and a hearing. If a juvenile violates the conditions of his probation, he and his parent after notice, may be required to appear before the court and the judge may make any disposition of the matter authorized by this Act. At the end of or at any time during probation, the judge may terminate probation by written order upon finding that there is no further need for supervision. The finding and order terminating probation may be entered in chambers in the absence of the juvenile and may be based on a report from the court counselor or at the election

of the judge, it may be entered with the juvenile present after notice and a hearing.

COMMENTARY

A. Summary

The court may review the case of a juvenile on probation at any time. The conditions of probation may be modified consistent with this Act after notice and a hearing. If, after notice and a hearing, the court finds that a juvenile has violated the conditions of his probation, the court may make any disposition of the matter authorized by this Act. At the conclusion of or at any time during the probation period, the judge may terminate probation, with or without the presence of the juvenile.

B. Derivation

This section is based on G.S. § 110-22.

C. Relationship to Existing Law

The proposed section does not change current law.

"ARTICLE 53.

"MODIFICATION AND ENFORCEMENT OF DISPOSITIONAL ORDERS; APPEALS.

" § 7A-593. Authority to Modify or Vacate. - (1) Upon motion in the cause or petition, and after notice, the judge may conduct a review hearing to determine whether the order of the court is in the best interest of the juvenile, and the judge may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(2) In a case of delinquency, the judge may reduce the nature or the duration of the disposition on the basis that it exceeds the statutory maximum, was imposed in an illegal manner or is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the dispositions given to juveniles convicted of similar offenses.

(3) In any case where the judge finds the juvenile to be delinquent, undisciplined, abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile or until terminated by order of the court.

COMMENTARY

A. Summary

Upon motion, the judge may conduct a review hearing to de-

termine if the order of the court is in the best interest

of the child. The court may modify or vacate a previous order if the needs or circumstances of the child have changed. If a child is adjudicated delinquent, undisciplined, abused, dependent, or neglected, the jurisdiction of the court to modify a dispositional order shall continue during the minority of the child or until terminated by the court.

B. Derivation

G.S. § 7A-286; IJA/ABA Standards, Dispositions, 5.1.

C. Relationship to Existing Law

Subsections (1) and (3) are taken directly from G.S. § 7A-286 and do not change current law.

Subsection (2) sets out modifications that may be made in more detail than current law. It creates guidelines relating to circumstances which may require judicial action to assure fair and just treatment following adjudication.

" § 7A-594. Request for Modification for Lack of Suitable Services. - If the Assistant Director of the Division of Institutional Services finds that any juvenile committed to the Division's care is not suitable for its program, the Assistant Director may make a motion in the cause so that the judge may make an alternative disposition.

COMMENTARY

A. Summary

The Division of Institutional Services shall have the right to make a motion for an alternative disposition in any case of a juvenile committed to its care if the Division finds that such juvenile is not suitable for any of its programs.

B. Derivation

This section is taken from current G.S. § 7A-286(5).

C. Relationship to Existing Law

This section reflects no change in existing law.

" § 7A-595. Right to Appeal. - Upon motion of a proper party as defined in G.S. § 7A-596, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within ten days after the hearing. A final order shall include:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order finding a juvenile to be delinquent in which no disposition is made within sixty days or where disposition is to be extensively deferred;
- (4) Any order of disposition after an adjudication that a juvenile is delinquent, undisciplined, abused, neglected, or dependent; or
- (5) Any order modifying custodial rights.

COMMENTARY

A. Summary

Upon motion of a proper party any final order of the court in a juvenile case may be appealed to the Court of Appeals. Notice of appeal must be given in open court at the time of the hearing or in

writing within 10 days after the hearing. A final order includes any order finding absence of jurisdiction; any order which determines the action and prevents a judgment from which appeal

might be taken; any order finding delinquency where disposition is excessively delayed; any dispositional order; or any order modifying custody rights.

B. Derivation

This section is based on G.S. § 7A-289, G.S. 7A-27, and on IJA/ABA Standards, Appeals and Collateral Review, 2.1.

C. Relationship to Existing Law

Current G.S. § 7A-289 provides the main basis for the proposed

statute. It authorizes appeals to the Court of Appeals with the same notice requirements, but limits appeals to adjudications and dispositional orders [subsections (4) in the proposed section]. Subsection (2) is adopted from G.S. § 7A-27. Subsections (1), (3), and (5) are based on the IJA/ABA Standards and broaden the areas open for review by the Court of Appeals.

" § 7A-596. Proper Parties for Appeal. - An appeal may be taken by the juvenile; the juvenile's parent, guardian, or custodian; or the State. The State's appeal is limited to the following:

- (1) Any final order in cases other than delinquency or undisciplined cases;
- (2) The following orders in delinquency or undisciplined cases:
 - (a) An order finding a state statute to be unconstitutional;
 - (b) Any order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

COMMENTARY

A. Summary

Any appeal may be taken by the juvenile and his parent, guardian, or custodian. The State may appeal any final order except in an undisciplined or delinquency case, the State may appeal an order adjudicating a state statute unconstitutional; any order which terminates the petition by upholding the defense of double jeopardy, holding that a cause of action is not stated under a statute, or granting a motion to suppress.

B. Derivation

This section is based on IJA/ABA Standards, Appeals and Collateral Review, 2.2.

C. Relationship to Existing Law

Current G.S. § 7A-289 authorizes any child, parent, guardian, custodian, or agency who is a party to a proceeding to appeal to the Court of Appeals. The proposed section does not mention agencies but authorizes the State to appeal in any case except those based on a petition alleging delinquent or undisciplined behavior. The justification for excluding appeals in

these areas is that these proceedings are essentially criminal in nature, and there is a common law tradition of refusing the right of appeal to the state in criminal cases. In addition, the United States Supreme Court has said that to allow government appeals in criminal proceedings would threaten the basic constitutional concepts of a right to a speedy trial and the prohibition against double jeopardy, concluding that "appeals by the government in criminal cases are something unusual, exceptional, not favored." See Well v. United States, 389 U.S. at 98. A final rationale, recognized by the Supreme Court since the 1891 decision in United States v. Sanges, 144 U.S. 310 (1891), is that the rights of the accused must be carefully protected when faced with as powerful an adversary as the State.

There are, however, a few limited situations where states may statutorily grant appellate review to the state in criminal proceedings. The exceptions enumerated in subsection (2) are designed to allow appeals in those areas.

" § 7A-597. Disposition Pending Appeal. - Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the judge orders otherwise. For compelling reasons which must be stated in writing, the judge may enter a temporary order affecting the custody or placement of the juvenile as he finds to be in the best interest of the juvenile or the State.

COMMENTARY

A. Summary

While awaiting the eventual outcome of an appeal, the child should be released unless the court orders otherwise. The court may attach conditions to such release. The court may also enter a temporary order for custody or placement of the child. Such order must be in writing and state the basis for the decision.

B. Derivation

This section is based on G.S. § 7A-289 and IJA/ABA Standards, Appeals and Collateral Review, 5.3.

C. Relationship to Existing Law

The proposed section gives the court essentially the same authority to enter a temporary order while an appeal is being pressed that is currently contained in G.S. § 7A-289. The proposed section states a policy favoring release and requires that an order for custody or placement be in writing, with justification for such action. The proposed section will, however, allow the court to impose some restrictions on the child who is released.

" § 7A-598. Disposition After Appeal. - Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of such an appeal, the judge shall have authority to modify or alter his original order of adjudication or disposition as he finds to be in the best interest of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within ten days thereafter as to why the modifying order should be vacated or altered.

COMMENTARY

A. Summary

When an adjudication or order of disposition of the court is upheld on appeal to the Court of Appeals or Supreme Court, the court shall have authority to modify the original order, in the best interests of the child, to reflect adjustment by the child or a change in circumstances. If the order is entered without the participation of all parties, the Court shall give notice to interested parties to show cause within 10 days as to why such

modifying order should be vacated or altered.

B. Derivation

This section is taken from G.S. § 7A-289.

C. Relationship to Existing Law

The proposed section makes no change in current law.

"ARTICLE 54.

"JUVENILE RECORDS AND SOCIAL REPORTS.

" § 7A-599. Confidentiality of Records. - (1) The Clerk of Superior Court shall maintain a complete record of all juvenile cases filed in his office to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the judge, except that the juvenile, his parent, guardian, custodian, or other authorized representative of the juvenile shall have a right to examine the juvenile's record. The record shall include the summons, petition, custody order, court order, written motions, the transcript of the hearing, and other papers filed in the proceeding.

(2) The Chief Court Counselor shall maintain a record of the cases of juveniles under supervision by court counselors which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or his family; a record of the probation reports of a juvenile; interviews with his family; or other information which the judge finds should be protected from public inspection in the best interest of the juvenile.

(3) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by his Department or under placement by the court. This file shall include material similar in nature to that described in subsection (2).

(4) The records maintained pursuant to subsections (2) and (3) may be examined only by order of the judge except that the juvenile shall have the right to examine them.

(5) Law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to Superior Court. Law enforcement records and files concerning juveniles shall be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian, and custodian.

(6) All records and files maintained by the Division of Institutional Services shall be withheld from public inspection and shall be open only to the inspection of the juvenile, professionals in that agency who are directly involved in the juvenile's case, and court counselors. The judge authorizing commitment of a juvenile shall have the right to inspect and order the release of records maintained by the Division of Institutional Services on that juvenile.

(7) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited.

COMMENTARY

A. Summary

This section provides for the confidentiality of records main-

tained on juveniles by the court, by court counselors, by

the training schools and by law enforcement. Inspection in all instances is strictly limited to professional persons having a direct relationship to the case.

B. Derivation

North Carolina G.S. § 7A-287; National Juvenile Law Center Model Code, Section 20; IJA/ABA, Juvenile Records and Information System, 1.3 and 5.1-5.4.

C. Relationship to Existing Law

This section expands G.S. § 7A-287 to cover law enforcement records, records maintained by court counselors, and records maintained by the training schools as well as court records kept in the clerk's office. The expansion was in response to concern expressed throughout the state as to the need for clarification.

" § 7A-600. Expunction of Records of Juveniles Adjudicated Delinquent and Undisciplined. - (1) Any juvenile who has attained the age of sixteen years may file a petition in the court where he was adjudicated undisciplined for expunction of all records of that adjudication.

(2) Any juvenile who has attained the age of sixteen years may file a petition in the court where he was adjudicated delinquent for expunction of all records of that adjudication provided:

(a) The offense for which he was adjudicated would have been a misdemeanor if committed by an adult and

(b) The juvenile has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(3) The petition shall contain, but not be limited to, the following:

(a) An affidavit by the petitioner that he has been of good behavior since the adjudication and, in the case of a petition based on a delinquency adjudication, that he has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state.

(b) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or

marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(c) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

The petition shall be served upon the District Attorney in the district wherein adjudication occurred. The District Attorney shall have ten days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

(4) If the judge, after hearing, finds that the petitioner satisfies the conditions set out in subsections (1) or (2), he shall order and direct the Clerk of Superior Court and all law enforcement agencies to expunge their records of the adjudication including all references to arrests, complaints, referrals, petitions, and orders.

(5) The Clerk of Superior Court shall forward a certified copy of the order to the Sheriff, Chief of Police, or other law enforcement agency.

(6) Records of a juvenile adjudicated delinquent or undisciplined being maintained by the Chief Court Counselor, an intake counselor, a court counselor or by personnel at a residential facility operated by the Division of Institutional Services shall be retained or disposed of as provided by the Office of Juvenile Justice.

COMMENTARY

A. Summary

A juvenile adjudicated undisciplined may have his record expunged when he becomes sixteen.

A juvenile adjudicated delinquent for a misdemeanor may have his record expunged when he reaches sixteen if he has not subsequently been adjudicated or convicted of an offense--felony or misdemeanor.

A petition requesting expunction must contain an affidavit from the juvenile asserting his good conduct; affidavits from two unrelated persons attesting to his character and reputation; and a statement that the petition is based on the earlier adjudication.

After a hearing, the judge shall order expunction if the juvenile meets the specified criteria.

The judge shall order the destruction of all court and law enforcement records. The Clerk shall forward a copy of the order to the local law enforcement agency.

B. Derivation

This section is based on G.S. § 15-223.

C. Relationship to Existing Law

This is a new section. The Committee originally favored the automatic destruction of all records relating to adjudications of delinquent or undisciplined behavior once the juvenile reached

eighteen years of age and was completely removed from the jurisdiction of the court. However, many presentees at public hearings across the State expressed the belief that many juveniles are now committing felonies repeatedly and will very likely continue that course of conduct after leaving the jurisdiction of the juvenile court. Law enforcement officers and district attorneys particularly felt that any records of felonious conduct should be available for sentencing purposes if the individual is later convicted of an offense.

The Committee therefore decided to limit the records which could be destroyed to those involving undisciplined acts or misdemeanor delinquent acts which are not repeated. The Committee supported automatic expunction in this type of situation, but it became apparent that it would be impossible under current reporting procedures to determine automatically if a juvenile had not been adjudicated delinquent or convicted as an adult subsequent to the initial adjudication. The Committee has used G.S. § 15-223 as a pattern to give the petitioner the opportunity to be heard and demonstrate his good conduct. However, the requirement of affidavits from law enforcement, the State Bureau of Investigation, and the Federal Bureau of Investigation are not required due to the fact that the confidential nature of juvenile court proceedings would, in most cases, prevent these agencies from having reliable information on subsequent delinquency adjudications.

" § 7A-601. Effect of Expunction. - (1) Whenever a juvenile's record is expunged, with respect to the matter in which the record was expunged, the juvenile who is the subject of the record and his parent may inform any person or organization including employers, banks, credit companies, insurance companies, and schools that he was not arrested, he did not appear before the court, and he was not adjudicated delinquent or undisciplined.

(2) Notwithstanding subsection (1), in any criminal or delinquency case if the juvenile is the defendant and chooses to testify or if he is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether he was adjudicated delinquent.

COMMENTARY

A. Summary

This section allows a juvenile whose record has been destroyed to deny that the action ever occurred, except in the case that he testifies or is called as a witness in a criminal or delinquency proceeding.

B. Derivation

This section is based on the IJA/ABA Standards, Juvenile Records and Information Systems, 17.7.

C. Relationship to Existing Law

There is currently no provision in North Carolina law

allowing the destruction of juvenile court records, although this is similar to the limited expunction provisions of G.S. § 90-96.

Subsection (2) incorporates case law from the United States Supreme Court into our statutes. In Davis v. Alaska, 415 U.S. 308 (1974) the court held that a defendant's Sixth Amendment right to confront witnesses outweighs the juvenile's and public interest in maintaining the confidentiality of a juvenile record.

" § 7A-602. Notice of Expunction. - Upon expunction of a juvenile's record, the Clerk of Superior Court shall send a written notice to the juvenile at his last known address informing him that the record has been expunged and with respect to the matter involved, the juvenile may inform any person that he has no record. The notice shall inform the juvenile further that if the matter involved is a delinquency record, the juvenile may inform any person that he was not arrested or adjudicated delinquent except that upon testifying in a criminal or delinquency proceeding, he may be required by a judge to disclose that he was adjudicated delinquent.

COMMENTARY

A. Summary

This section requires that a juvenile whose records are destroyed be notified of that fact and his rights subsequent to destruction. It includes notification that the protection does not extend to testifying in later criminal proceedings where information may be used for impeachment purposes.

B. Derivation

This section is based on the IJA/ABA Standards, Juvenile Records and Information Systems, 17.6.

C. Relationship to Existing Law

This section has no parallel in current North Carolina law.

"ARTICLE 55.

"INTERSTATE COMPACT ON JUVENILES.

" § 7A-603. Execution of Compact. - The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

" § 7A-604. Findings and Purposes. - That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

- (1) Cooperative supervision of delinquent juveniles on probation or parole;
- (2) The return, from one state to another, of delinquent juveniles who have escaped or absconded.
- (3) The return, from one state to another, of non-delinquent juveniles who have run away from home; and
- (4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformatory, and

protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

" § 7A-605. Existing Rights and Remedies. - That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

" § 7A-606. Definitions. - That, for the purposes of this Compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of

Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

" § 7A-607. Return of Runaways. - (1) That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an

emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to

any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him, shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when

a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(3) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

" § 7A-608. Return of Escapees and Absconders. - (1) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from

whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention

order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to this Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on

probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of such return.

" § 7A-609. Voluntary Return Procedure. - That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without a requisition in another

state party to this Compact under the provisions of G.S. § 7A-607 (1) or G.S. § 7A-608 (1), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order, in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

" § 7A-610. Cooperative Supervision of Probationers and Parolees. - (1) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer the supervision accordingly.

(2) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by

the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(4) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

" § 7A-611. Responsibility for Costs. - (1) That the provisions of G.S. § 7A-607 (2), G.S. § 7A-608 (2), and G.S. § 7A-609 (4) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(2) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to G.S. § 7A-607 (2), G.S. § 7A-608 (2), or G.S. § 7A-609 (4) of this Compact.

" § 7A-612. Detention Practices. - That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

" § 7A-613. Supplementary Agreements. - That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) Provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles taking into consideration the character of facilities, services, and subsistence furnished;

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

" § 7A-614. Acceptance of Federal and Other Aid. - That any state party to this Compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this Compact, and may receive and utilize, the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

" § 7A-615. Compact Administrators. - That the governor of each state party to this Compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more efficiently the terms and provisions of this Compact.

" § 7A-616. Execution of Compact. - That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or (of) execution to be in accordance with the laws of the executing state.

" § 7A-617. Renunciation. - That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six month's notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under G.S. § 7A-610 hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under G.S. § 7A-613 hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present section.

" § 7A-618. Severability. - That the provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Derivation: The preceding sections are from G.S. § 110-58.

" § 7A-619. Compact Administrator. - Pursuant to said Compact, the Governor is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. Said Compact Administrator shall serve subject to the pleasure of the Governor. The Compact Administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder.

Derivation: G.S. § 110-59.

" § 7A-620. Supplementary Agreements. - The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Derivation: G.S. § 110-60.

" § 7A-621. Discharging Financial Obligations Imposed by Compact on Agreement. - The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder.

Derivation: G.S. § 110-61.

" § 7A-622. Enforcement of Compact. - The courts, departments, agencies, and officers of this State and subdivisions shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

Derivation: G.S. § 110-62.

" § 7A-623. Additional Procedure for Returning Runaways Not Precluded. - In addition to any procedure provided in G.S. § 7A-607 and G.S. § 7A-609 of the Compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile.

Derivation: G.S. § 110-63.

" § 7A-624. Proceedings for Return of Runaways under G.S. § 7A-607 of Compact; "Juvenile" Construed. - The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of G.S. § 7A-607 of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of G.S. § 7A-607 of the Compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of G.S. § 7A-607 of the Compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the Compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of G.S. § 7A-607 of the Compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any person who has not reached his or her eighteenth birthday.

Derivation: G.S. § 110-64.

" § 7A-625. Interstate Parole and Probation Hearing Procedures for Juveniles. - Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact on Juveniles, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or a probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this Article within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this Section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for retaking or the reincarceration.

Derivation: G.S. § 110-64.6.

" § 7A-626. Hearing Officers. - Any hearing pursuant to this Article may be before the Administrator of the Interstate

Compact on Juveniles, a deputy of such Administrator, or any other person authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile parole or probation violations, except that no hearing officer shall be the person making the allegation of violation.

Derivation: G.S. § 110-64.7.

" § 7A-627. Due Process at Parole or Probation Violation Hearing. - With respect to any hearing pursuant to this Article, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that the purpose of the hearing is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.

A record of the proceedings shall be made and preserved.

Derivation: G.S. § 110-64.8.

" § 7A-628. Effect of Parole or Probation Violation Hearing Outside the State. - In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact on Juveniles, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Article, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

Derivation: G.S. § 110-64.9.

" § 7A-629. Amendment to the Interstate Compact on Juveniles Concerning Interstate Rendition of Juveniles Alleged to be Delinquent. - (1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of G.S. § 7A-608 and G.S. § 7A-609 of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state

upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in G.S. § 7A-608 of the Compact shall be forwarded by the judge of the court in which the petition has been filed.

COMMENTARY

This is a new section and proposed by the Office of the Attorney General of Florida. The fifteen basic sections of the Interstate Compact on Juveniles have been ratified by all states. The rendition Amendment is an optional section which is in force only among states which specifically ratify it.

This amendment is designed to meet the practical problem arising when a juvenile who is a resident of State "A" travels to State

"B" and there commits a serious offense and who then flees to State "C" before he can be taken into custody. This situation cannot adequately be handled under the basic Compact and such a juvenile could not be returned to the state where the offense occurred.

If North Carolina adopts this optional provision, signature pages for the optional provision must be transmitted to other states which have adopted this provision.

" § 7A-630. Out of State Confinement Amendment. - (1) The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

(a) Whenever the fully constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) Escapes and absconders who would otherwise be returned pursuant to G.S. § 7A-608 of the Compact may be confined or reconfined in the receiving state pursuant to this Amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to G.S. § 7A-608, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in G.S. § 7A-608 may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(c) The confinement or reconfinement or a parolee, probationer, escapee, or absconder pursuant to this

amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(d) As used in this amendment: 1. "sending state" means sending state as that term is used in G.S. § 7A-610 of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of G.S. § 7A-608 of the Compact; 2. "receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

(e) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "Compact Institution" and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(f) Persons confined in "Compact Institutions" pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to an appropriate institution within the

sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(g) All persons who may be confined in a "Compact Institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(h) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise

agree. Any two or more states party to his amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(i) This amendment shall take initial effect when entered into by any two or more states party to the Compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

(2) In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.

COMMENTARY

The Interstate Compact on Juveniles provides for the return of runaway juveniles and for the supervision in other states of juveniles on parole or probation. The Compact also permits states which are party to it to enter into special agreements for the care of juvenile offenders. It has proved to be a useful instrument for dealing with various problems involving juveniles on an interstate basis.

Experience with the Compact has demonstrated that under some circumstances it is desirable to

confine a juvenile offender in a state other than the one in which he committed an offense and adjudged delinquent. This cannot be done under the basic Compact nor can it be done by special agreements entered into under the Compact except through a process of transfer. This Amendment was drafted to take care of other situations, particularly those involving parolees and probationers or escapees and absconders, in which out-of-state confinement is desirable.

One example of a type of situation in which the Amendment would be useful is when a juvenile on parole or probation being supervised in another state commits a violation which makes institutionalization desirable. Since the juvenile was being supervised in the receiving state because his family was there or for other reasons which made it desirable for him to be there, it may be preferable to place him in an institution in that state rather than return him to the sending state. Under the basic Compact this could not be done unless new charges of delinquency which warranted institutionalization were brought. However, under the Amendment such arrangements could be made without filing new charges other than violation of parole or probation.

A second example involves escapees or absconders who flee to another state. If the distance involved is great so that costs of return would be high, or because of other special circumstances, it may be better to arrange to place the juvenile in an institution in the state to which he has fled instead of returning him. Again, this could be done under the Amendment, but not under the Compact.

The amendment provides that any placement of a juvenile in an institution of another state can be done only with the concurrence of appropriate officials in the two states involved. The state in which the juvenile is confined acts only as an agent for the sending state. All costs are borne by the sending state with the amount of payment and other details set forth in a contract between the two states. Under the Amendment, two or more states could enter into a general contract governing all cases arising under it or special contracts could be drawn for each case.

The Amendment will be effective among any two or more states which enact it. Passage of the Amendment in no way affects the present Compact which continues to be in force among all party states regardless of whether they adopt the Amendment.

"ARTICLE 56. EMANCIPATION.

" § 7A-631. Who May Petition. - Any juvenile who is sixteen years of age and who has resided in the same county in North Carolina or on federal territory within the boundaries of North Carolina for six months next preceeding the filing of the petition may petition the court in that county for a judicial decree of emancipation.

COMMENTARY

A. Summary

A juvenile may petition the District Court in the county where he lives for a decree of emancipation if he is at least 16 years old and has been a resident for six months.

B. Derivation

The emancipation Article was drafted after studying other state provisions with special consideration to the Maine Revised Statutes Annotated, Chapter 15, Part 6, Section 3704 and the IJA/ABA Standards, Rights of Minors, 2.1.

C. Relationship to Existing Law

There is not currently a statute in North Carolina which authorizes the emancipation of a child under 18 years of age. There is also some confusion as to whether or not case law empowers the court to emancipate a minor. The proposed section would establish clear authority for the court to emancipate a minor who is willing and capable of caring for himself.

" § 7A-632. Petition. - The petition shall be signed and verified by the petitioner and shall contain the following information:

- (1) The full name of the petitioner, his birth date, and state and county of birth;
- (2) A certified copy of the petitioner's birth certificate;
- (3) The name and last known address of the parent, guardian, or custodian;
- (4) The petitioner's address and length of residence at that address;
- (5) The petitioner's reasons for requesting emancipation; and
- (6) The petitioner's plan for meeting his own needs and living expenses which plan may include a statement of employment and wages earned that is verified by his employer.

COMMENTARY

A. Summary

A petition for emancipation must contain the name, birth date, and state and county of the petitioner's birth; a certified copy of the juvenile's birth certificate to verify the birth information; the name and last known address of the juvenile's parent, guardian, or custodian; the petitioner's address and length of time that he has lived

there; the juvenile's reasons for wanting to be emancipated; and the juvenile's plan for meeting his needs and cost of living should he be granted the decree.

B. Relationship to Existing Law

This is a new section setting out the information that will be

required to initiate an emancipation proceeding.

" § 7A-633. Summons. - A copy of the filed petition along with a summons shall be served upon the petitioner's parent, guardian, or custodian who shall be named as respondents. The summons shall include the time and place of the hearing and shall notify the respondents to file written answer within thirty days after service of the summons and petition. In the event that personal service cannot be obtained, service shall be in accordance with G.S § 1A-1, Rule 4 (j).

COMMENTARY

A. Summary

A summons giving notice of the time and place of the emancipation hearing, and a copy of the petition shall be served on the petitioner's parent, guardian, or custodian. The summons also notifies them that they have 30 days to file an answer if they so desire.

B. Relationship to Existing Law

This is a new section which establishes procedures for notifying the parent of a juvenile requesting emancipation.

" § 7A-634. Hearing. - The judge, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner shall have the burden of showing by a preponderance of the evidence that emancipation is in his best interest. Upon finding that reasonable cause exists, the judge may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The judge may continue the hearing and order investigation by a court counselor or by the county Department of Social Services to substantiate allegations of the petitioner or respondents.

No husband-wife or physician-patient privilege shall be grounds for excluding any evidence in the hearing.

COMMENTARY

A. Summary

There shall be a hearing on the request for emancipation at which all parties may present evidence and cross-examine witnesses before the judge. The petitioner must establish by a preponderance of the evidence that emancipation is in his best interest. If the judge finds reasonable cause, he may order the juvenile examined to evaluate his mental or physical condition. The judge may also continue the hearing and order the Department of Social Services

or a court counselor to make an investigation.

No evidence may be excluded on the basis of the husband-wife or physician-patient privilege.

B. Relationship to Existing Law

This is a new section which sets out procedures for a judicial hearing to determine the juvenile's need for emancipation.

" § 7A-635. Considerations for Emancipation. - In determining the best interest of the petitioner and the need for emancipation, the judge shall review the following considerations:

- (1) The parental need for the earnings of the petitioner;
- (2) The petitioner's ability to function as an adult;
- (3) The petitioner's need to contract as an adult or to marry;
- (4) The employment status of the petitioner and the stability of his living arrangements;
- (5) The extent of family discord which may threaten reconciliation of the petitioner with his family;
- (6) The petitioner's rejection of parental supervision or support; and
- (7) The quality of parental supervision or support.

COMMENTARY

A. Summary

At the hearing to determine if emancipation is in the juvenile's best interest, the judge should weigh the concerns of all parties with regard to the parents need for the juvenile's income, the juvenile's ability to function as an adult, the juvenile's need to contract or marry, the employment status and living arrangements of the juvenile, prob-

lems in the family which may hinder or prevent normal family relations, and the quality of and juvenile's reaction to parental supervision or support.

B. Relationship to Existing Law

This is a new section which suggests various factors which the

judge should consider in determining the need for emancipation.

" § 7A-636. Final Decree of Emancipation. - After reviewing the considerations for emancipation, the judge may enter a decree of emancipation if he determines:

(1) That all parties are properly before the court or were duly served and failed to appear and that time for filing an answer has expired; and

(2) That the petitioner has shown a proper and lawful plan for adequately providing for his own needs and living expenses; and

(3) That the petitioner is knowingly seeking emancipation and fully understands the ramifications of his act; and

(4) That emancipation is in the best interest of the petitioner.

The decree shall set out the court's findings.

If the judge determines that the criteria in subsections (1) through (4) are not met, he shall order the proceeding dismissed.

COMMENTARY

A. Summary

After a hearing and careful consideration of all the factors involved, the judge may enter a decree of emancipation if he finds that all parties are properly before the court, or were served, failed to appear and the time for answering has past; that the juvenile has shown a proper and lawful plan for meeting his needs; that the juvenile understands the full implications of his action; and that emancipation is in the best interest of the juvenile.

If the judge decides that these criteria have not been

met, he must dismiss the petition.

B. Relationship to Existing Law

This is a new section which mandates criteria to be met before a decree of emancipation may issue, unlike the considerations listed in the previous section which are intended to serve only as a guide to the judge in considering the need for emancipation.

" § 7A-637. Costs of Court. - The judge may tax the costs of the proceeding to any party or may, for good cause, order the costs remitted.

The Clerk of Superior Court may collect costs for furnishing to the petitioner a certificate of emancipation which shall recite the name of the petitioner and the fact of the petitioner's emancipation by court decree and shall have the seal of the Clerk of Superior Court affixed thereon.

COMMENTARY

A. Summary

The judge may remit the costs or order any party to pay them.

The clerk may issue a certificate of emancipation, for which he may collect appropriate costs.

B. Relationship to Existing Law

This is a new section.

" § 7A-638. Legal Effect of Final Decree. - As of entry of the final decree of emancipation,

(1) The petitioner has the same right to make contracts and conveyances, to sue and be sued, and to transact business as if he were an adult.

(2) The parent or guardian is relieved of all legal duties and obligations owed to the petitioner and is divested of all rights with respect to the petitioner;

(3) The decree is irrevocable.

Notwithstanding any other provision of this section, a decree of emancipation shall not alter the application of G.S. § 14-322.2, G.S. § 14-326.1, or the petitioner's right to inherit property by intestate succession.

COMMENTARY

A. Summary

When a decree of emancipation has been entered, the juvenile has the same rights to make contracts and conveyances, to sue and be sued, and to transact business as an adult. His parents are relieved of all legal duties and obligations and are divested of all rights with respect to the juvenile. However, the decree shall not alter the responsibility of the parent to support the emancipated juvenile should he become handicapped or the responsibility of an emancipated juvenile to support his parents or the juvenile's right to inherit property by intestate succession.

Once issued, a decree of emancipation is irrevocable.

B. Relationship to Existing Law

This is a new section which clarifies the legal effect of a decree of emancipation.

" § 7A-639. Appeals. - Any petitioner, parent, or guardian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within ten days after the hearing. Pending disposition of an appeal, the judge may enter a temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State.

COMMENTARY

A. Summary

The juvenile or his parent may appeal the decision of the judge in an emancipation proceeding to the Court of Appeals if notice is given in court at the hearing or in writing within 10 days after the hearing. Pending the appeal, the judge may enter a custody order with respect to the juvenile.

B. Relationship to Existing Law

This is a new section establishing appeal procedures following a hearing for emancipation.

" § 7A-640. Application of Common Law. - A married juvenile is emancipated by this Article. All other common law provisions for emancipation are superceded by this Article.

"ARTICLE 57.

"TERMINATION OF PARENTAL RIGHTS.

" § 7A-641. Legislative Intent; Construction of Article. -

The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and his biological or legal parents when such parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of his parents or other persons are in conflict; and to that end this Article should be liberally construed.

DERIVATION: G.S. § 7A-289.23.

" § 7A-642. Jurisdiction. - The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county Department of Social Services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. A guardian ad litem shall be appointed to represent any minor parent under the age of fourteen years.

DERIVATION: G.S. § 7A-289.24.

" § 7A-643. Who May Petition. A petition to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by:

- (1) Either parent seeking termination of the right of the other parent; or
- (2) Any person who has been judicially appointed as the guardian of the person of the juvenile;
- (3) Any county Department of Social Services or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction; or
- (4) Any county Department of Social Services or licensed child-placing agency to which the juvenile

has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. § 48-9 (a) (1); or

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition.

DERIVATION: G.S. § 7A-289.24.

" § 7A-644. Petition. - The petition shall be verified by the petitioner and shall be entitled "In re (last name of juvenile) a minor juvenile"; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing;

(2) The name and address of the petitioner and facts sufficient to identify the petitioner as one entitled to petition under G.S. § 7A-643;

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. Such information may be contained in an

affidavit attached to the petition and incorporated therein by reference;

(4) The name and address of any person appointed as guardian of the person of the juvenile pursuant to the provisions of Article 1 of Chapter 33 of the General Statutes, or of G.S. § 7A-545;

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of such custody order shall be attached to the petition; and

(6) Facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

DERIVATION: G.S. § 7A-289.25.

" § 7A-645. Preliminary Hearing; Unknown Parent. - (1)
If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall within ten days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in said county in that ten day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(2) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the

unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and such parent shall be summoned to appear in accordance with G.S. § 7A-646.

(3) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing; but the court may cause summons to be issued to any person directing him to appear and testify.

(4) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. § 1-597 and 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

(a) Designate the court in which the petition is pending;

(b) Be directed to "the father (mother) (father and mother) of a male (female) juvenile born on or about

_____ in _____ County,
(date)

_____, _____,
(City) (State)

respondent";

(c) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In re Doe" substituted therefor);

(d) State that a petition seeking to terminate the parental rights of the respondent has been filed;

(e) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice, and be substantially in the form as set forth in G.S. 1A-1, Rule 4 (j) (9) (c); and

(f) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(5) The court shall issue the order required by subsections (2) and (4) within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(6) Upon the failure of the parent served by publication pursuant to subsection (4) to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

DERIVATION: G.S. § 7A-289.26.

" § 7A-646. Issuance of Summons. - Except as provided in G.S. § 7A-645 upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile;
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile;
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction;
- (4) Any county Department of Social Services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to G.S. § 48-9 (a) (1); and
- (5) The juvenile, if he is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county Department of Social Services or licensed child-placing agency, nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file written answer within 30 days after service of the summons and petition and that if the respondents fail to answer, the petitioner will apply to the court for the relief prayed for in the petition. Service of the summons shall be completed as provided under the procedures established by G.S. § 1A-1, Rule

4 (j); but the parent of the juvenile shall not be deemed to be under disability even though such parent is a minor.

DERIVATION: G.S. § 7A-289.27.

" § 7A-647. Failure of Respondents to Answer. - Upon the failure of the respondents to file written answer to the petition with the court within 30 days after service of the summons and petition, or within 30 days from the date of first publication if service is by publication, the court shall issue an order terminating all parental and custodial rights of the respondent or respondents with respect to the juvenile, provided the court shall order a hearing on the petition and may examine the petitioner or others on the facts alleged in the petition.

DERIVATION: G.S. § 7A-289.28.

" § 7A-648. Answer of Respondents. - (1) Any respondent may file a written answer to the petition. The answer shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or his attorney.

(2) If an answer denies any material allegation of the petition, the court shall appoint a licensed attorney as guardian ad litem for the juvenile to represent the best interests of the juvenile. The court shall conduct a special hearing

after notice of not less than 10 days nor more than 30 days to the petitioner, the answering respondent(s), and the guardian ad litem for the juvenile, to determine the issues raised by the petition and answer(s). Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the petitioner, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition and responsive pleading.

DERIVATION: G.S. § 7A-289.29.

" § 7A-649. Adjudicatory Hearing on Termination. - (1) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury. Reporting of the hearing shall be as provided by G.S. § 7A-198 for reporting civil trials.

(2) The court may, upon finding that reasonable cause exists, order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the juvenile's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the juvenile is at issue, the court may order a similar examination of any parent of the juvenile.

(3) The court may for good cause shown continue the hearing for such time as is required for receiving additional evidence, any reports or assessments which the court has requested, or any other information needed in the best interest of the juvenile.

(4) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. § 7A-651 which authorize the termination of parental rights of the respondent.

(5) All findings of fact shall be based upon a preponderance of the evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

DERIVATION: G.S. § 7A-289.30.

" § 7A-650. Disposition. - (1) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of such parent not be terminated.

(2) Should the court conclude that irrespective of the existence of one or more circumstances authorizing termination

of parental rights, the best interests of the juvenile require that such rights should not be terminated, the court shall dismiss the petition, but only after setting forth the facts and conclusions upon which such dismissal is based.

(3) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition, making appropriate findings of fact and conclusions.

(4) The court may tax the cost of the proceeding to any party.

DERIVATION: G.S. § 7A-289.31.

" § 7A-651. Grounds for Terminating Parental Rights. -

The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has without cause failed to establish or maintain concern or responsibility as to the juvenile's welfare.

(2) The parent has physically abused or neglected the juvenile. The juvenile shall be deemed to be physically abused or neglected if the court finds him to be abused or neglected as defined in Article 41.

(3) The parent has wilfully left the juvenile in foster care for more than two consecutive years without showing to the satisfaction of the court that substantial progress has been made within two years in correcting

those conditions which led to the removal of the juvenile for neglect, or without showing positive response within two years to the diligent efforts of a county Department of Social Services, a child-caring institution or licensed child-placing agency to encourage the parent to strengthen the parental relationship to the juvenile or to make and follow through with constructive planning for the future of the juvenile.

(4) The juvenile has been placed in the custody of a county Department of Social Services or a licensed child-caring institution, and the parent, for a continuous period of six months next preceding the filing of the petition, has failed to pay a reasonable portion of the cost of care for the juvenile.

(5) One parent has been awarded custody of the juvenile by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition wilfully failed without justification to pay for the care, support, and education of the juvenile as required by said decree or custody agreement.

(6) The father of a juvenile born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

(a) Established paternity judicially or by affidavit; or

(b) Legitimated the juvenile pursuant to provisions of G.S. § 49-10, or filed a petition for this specific purpose; or

(c) Legitimated the juvenile by marriage to the mother of the juvenile; or

(d) Provided substantial financial support or consistent care with respect to the juvenile and mother.

DERIVATION: G.S. § 7A-289.32.

" § 7A-652. Effects of Termination Order. - An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent, arising from the parental relationship, except that the juvenile's right of inheritance from his parent shall not terminate until such time as a final order of adoption is issued. Such parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein.

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to, a county Department of Social Services or licensed child-placing agency and is in the custody of such agency at the time of such filing of the petition, that agency shall, upon

entry of the order terminating parental rights, acquire all of the rights for placement of said juvenile as such agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of G.S. § 48-9 (a) (1), including the right to consent to the adoption of such juvenile.

(2) Except as provided in subsection (1), upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the petitioner, or some other suitable person, or in the custody of the Department of Social Services or licensed child-placing agency, as may appear to be in the best interest of the juvenile.

DERIVATION: G.S. § 7A-289.33.

" § 7A-653. Appeals; Modification of Order After Affirmation. - Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interest of the juvenile or the best interest of the State. Upon the

affirmation of the order of adjudication or disposition of the court by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within ten days thereafter, as to why said modifying order should be vacated or altered.

DERIVATION: G.S. § 7A-289.34.

COMMENTARY

The Juvenile Code Revision Committee unfortunately did not have sufficient time to give every issue the in-depth study which is necessary in order to make informed recommendations. Termination of parental rights is one area which the Committee did not have time to adequately investigate. As a result, the Committee has incorporated this Article from Article 24B of the current statutes, without change.

However, the Committee did discuss this issue and noted some areas of difficulty which need to be addressed in the near future. The Committee therefore recommends that statutes related to the termination of parental rights be reviewed with consideration of the following points:

1. The Committee is concerned that G.S. § 7A-651 (1) is unreasonably vague and difficult to interpret.

2. G.S. § 7A-651 (3) is also difficult to interpret. The Committee is convinced that it is virtually impossible to determine what constitutes "diligent efforts" by Social Services, a child-caring institution, or a child-placing agency to encourage the parents to strengthen the parental relationship with the child.

3. The Committee is concerned that G.S. § 7A-651 (5) may make it too simple for one parent to terminate the rights of the other parent, while at the same time leaving the parent whose rights were terminated, obligated to the child for inheritance purposes pursuant to G.S. § 7A-652.

4. Finally, the Committee recommends that the issue of legal representation for indigent parents who are parties to a termination of parental rights proceeding be considered. Under G.S. § 7A-648 (b), the child who is the subject of the proceeding is represented by a guardian ad litem. In addition, G.S. § 7A-642 authorizes the appointment of a guardian ad litem to protect the interests of a parent under fourteen years of age, but the Article does not speak to representation for older parents who are indigent.

"ARTICLE 58.

"JUDICIAL CONSENT FOR EMERGENCY SURGICAL OR MEDICAL TREATMENT.

" § 7A-654. Judicial Authorization of Emergency Treatment; Procedure. - A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the North Carolina General Statutes, whose physician is barred from rendering necessary treatment by reason of parental refusal to consent to treatment, may receive such treatment with court authorization under the following procedure:

(1) The physician shall sign a written statement setting out:

- (a) The treatment to be rendered and the emergency need for treatment; and
- (b) The refusal of the parent, guardian, or person standing in loco parentis to consent to the treatment; and
- (c) The impossibility of contacting a second physician for a concurring opinion on the need for treatment in time to prevent immediate harm to the juvenile.

(2) Upon examining the physician's written statement prescribed in subsection (1) and finding:

- (a) That the statement is in accordance with this Article, and

(b) That the proposed treatment is necessary to prevent immediate harm to the juvenile. A judge may issue a written authorization for the proposed treatment to be rendered.

(3) In acute emergencies in which time may not permit implementation of the written procedure set out in subsections (1) and (2), a judge may, in his discretion, authorize treatment in person or by telephone upon receiving the oral statement of a physician satisfying the requirements of subsection (1) and upon finding that the proposed treatment is necessary to prevent immediate harm to the juvenile.

(4) A judge's authorization for treatment overriding parental refusal to consent should not be given without attempting to offer the parent an opportunity to state his reasons for refusal; however, failure of the judge to hear the parent's objections shall not invalidate judicial authorization under this Article.

(5) A judge's authorization for treatment under subsections (1) and (2) shall be issued in duplicate. One copy shall be given to the treating physician and the other copy shall be attached to the physician's written statement and filed as a juvenile proceeding in the office of the Clerk of Superior Court.

(6) A judge's authorization for treatment under subsection (3) shall be reduced to writing as soon as possible, supported by the physician's written statement as prescribed

in subsection (1) and shall be filed as prescribed in subsection (5).

A judge's authorization for treatment under this Article shall have the same effect as parental consent for treatment.

Following a judge's authorization for treatment and after giving notice to the juvenile's parent, the judge shall conduct a hearing in order to provide for payment for the treatment rendered. The judge may order the parent or other responsible parties to pay the cost of such treatment. If the judge finds the parent is unable to pay the cost of treatment, such cost shall be a charge upon the county when so ordered.

This Article shall operate as a remedy in addition to the provisions in G.S. § 7A-581 (3).

Sec. 2. The following sections of the General Statutes are repealed: G.S. § 110-22, G.S. § 110-23.1, G.S. § 110-24, G.S. § 110-58 through G.S. § 110-64.9, G.S. § 110-115 through G.S. § 110-123, G.S. § 134A-18, G.S. § 134A-19, G.S. § 134A-23, G.S. § 134A-24, G.S. § 134A-27, G.S. § 134A-28, G.S. § 134A-30 through G.S. § 134A-33.

-----SEVERABILITY CLAUSE

Sec. 3. If any section or provision of this Act be declared unconstitutional or invalid by the courts, the same shall not affect the validity of the Act as a whole or any part other than the part so declared to be unconstitutional or invalid.

-----EFFECTIVE DATE

Sec. 4. This Act shall become effective January 1, 1980.

A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE OFFICE OF JUVENILE JUSTICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. § 7A-289.1 through G.S. § 7A-289.7; G.S. § 7A-289.13 through G.S. § 7A-289.16; and G.S. § 7A-289.22 through G.S. § 7A-289.34 are repealed and the following new Articles are added to Chapter 7A:

"OFFICE OF JUVENILE JUSTICE.

"ARTICLE 59.

"POWERS AND ORGANIZATION.

" § 7A-655. Office of Juvenile Justice; Purpose. - The purpose of this Act is to provide for a uniform statewide system of juvenile justice services by incorporating the existing services of intake, probation, aftercare, training schools, detention, community-based alternatives, and the Interstate Compact on Juveniles, into a single Office. The Office shall be accountable to the public, consistent in its system of service delivery and child-oriented.

" § 7A-656. Office of Juvenile Justice; Creation. - There is hereby established a State office to be known as the Office of Juvenile Justice which shall be within the Judicial Department but shall operate separately from the Administrative Office of the Courts.

" § 7A-657. Office of Juvenile Justice; Transfer of Functions. - (1) All functions, powers, duties, and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Office of Juvenile Justice.

(a) The Division of Youth Services, Department of Human Resources;

(b) Youth Services Advisory Committee, Department of Human Resources;

(c) Juvenile Services Division, Administrative Office of the Courts;

(d) Administrator of the Interstate Compact, Department of Human Resources.

(2) The Office of Juvenile Justice shall perform such other functions as may be assigned by the Chief Justice or his designee from among the Associate Justices.

" § 7A-658. Transfer of Personnel and Property. - All institutions and offices of the Division of Youth Services of the Department of Human Resources and the Juvenile Services Division of the Administrative Office of the Courts (including land, buildings, equipment, supplies, personnel, or other properties rented or controlled for those Divisions) are hereby transferred to the Office of Juvenile Justice which shall administer those programs as provided by this Act.

" § 7A-659. Office of Juvenile Justice. Director - Deputy Director. - (1) The head of the Office of Juvenile Justice shall be the Director. The Director shall be appointed by and shall serve at the pleasure of the Chief Justice of the Supreme Court. The Chief Justice may delegate supervision to any Associate Justice. The Director shall receive the annual salary provided in the Budget Appropriations Act, payable monthly, and reimbursement for travel and subsistence expenses at the same rate as State employees generally. Service as Director shall be equivalent to service as the Director of the Administrative Office of the Courts for purposes of entitlement to retirement pay or to retirement for disability. The Director shall have powers and duties conferred on him by this Article, delegated to him by the Chief Justice, and conferred on him by the Constitution and laws of this State.

(2) The Director shall appoint a Deputy Director of the Office of Juvenile Justice to serve at the pleasure and under the supervision of the Director. The Deputy Director shall receive the annual salary provided in the Budget Appropriations Act, payable monthly, and reimbursement for travel and subsistence expenses at the same rate as State employees generally. The Deputy Director shall assist the Director in the performance of his duties and shall perform such additional functions as may be assigned by the Director.

(3) The Director of the Office of Juvenile Justice shall appoint an Assistant Director to head each of the following divisions: the Division of Court Services, the Division of Community-Based Programs, and the Division of Institutional Services. The Assistant Directors shall serve at the pleasure of the Director. The Director may appoint other assistants and employees as are necessary to enable him to perform the duties of his office.

" § 7A-660. Office of Juvenile Justice. Duties and Powers of Director. - The Director of the Office of Juvenile Justice shall:

(1) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Office of Juvenile Justice and authorize expenditures from funds appropriated for these purposes;

(2) Collect and compile statistical data and conduct evaluations and studies on juvenile justice;

(3) Develop a statewide plan for staff development and training so that personnel within the Office of Juvenile Justice may be appropriately trained and qualified; this plan may include attendance at appropriate professional meetings and opportunities for educational leave for academic study;

(4) Assure quality in residential programs and community based services which are designed to meet the needs of juveniles who need care or services;

(5) Arrange appropriate coordination and planning with the child-serving agencies of the Department of Human Resources and promote interdepartmental coordination;

(6) Procure, distribute, exchange, transfer, and assign equipment, books, forms, and supplies as are to be acquired with State funds for the Office of Juvenile Justice;

(7) Have the authority to close a State facility operated by the Division of Institutional Services when its operation is no longer justified and to transfer State funds appropriated for the operation of any State residential facility which is closed to fund community-based programs or to improve the efficiency of existing facilities, provided such actions are approved by the Advisory Budget.

"ARTICLE 60.

"DIVISION OF COMMUNITY-BASED PROGRAMS.

" § 7A-661. Division of Community-Based Programs. - There is hereby established, within the Office of Juvenile Justice, the Division of Community-Based Programs which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations. This Division is responsible for the development of a comprehensive statewide plan for community-based alternatives to training school commitment so that "status offenders," undisciplined juveniles as defined by G.S. § 7A-507 (29), may be kept out of the institutions of this State. The Division of Community-Based Programs shall also provide non-residential program disposition options in any case before the court when the judge deems these dispositions to be in the best interest of the juvenile and the community.

" § 7A-662. Duties and Powers of Assistant Director of Community-Based Programs. - The Assistant Director of Community-Based Programs shall serve under the Director of the Office of Juvenile Justice and shall assist the Director in performing the following powers and duties of his office:

- (1) To assist local governments and private service agencies in the development of community-based programs, and to provide information on the availability of potential

funding sources and whatever assistance may be requested in making application for needed funding;

(2) To develop evaluation standards for the objective evaluation of all the Division's programs and to develop minimum operating standards if necessary;

(3) To develop a formula for funding, on a matching basis, community-based services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles. Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed on January 1, 1978.

" § 7A-663. Purchase of Care or Services from Programs Meeting State Standards. - The Division of Community-Based Programs may purchase care or services from public or private agencies providing delinquency prevention programs or community-based services if the programs meet the State standards developed under G.S. § 7A-662. As institutional populations are reduced, the Office of Juvenile Justice may divert State funds appropriated for institutional programs to purchase such services, pursuant to the provisions of the Executive Budget Act.

" § 7A-664. County Assessment of Youth Needs. - The Board of County Commissioners of each participating county shall conduct or arrange for a continuing study of youth needs in the county, giving particular attention to the need for delinquency prevention programs and community-based services (residential or nonresidential) which would provide an alternative to commitment to training school. The Board of County Commissioners may delegate the responsibility to any appropriate board or department of county government, or it may contract with an appropriate private agency or group for the continued study. Adjoining counties may cooperate in continuing such a study on a regional basis, utilizing appropriate public or private resources.

The Board of County Commissioners of any county may request technical assistance from the Director of the Office of Juvenile Justice with such study. As each participating county plans for its continuing assessment of youth needs in the county or region, the county shall submit annual reports to the Office of Juvenile Justice.

"ARTICLE 61.

"DIVISION OF COURT SERVICES.

" § 7A-665. Division of Court Services. - There is hereby established, within the Office of Juvenile Justice, the Division of Court Services which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations. The Division shall be responsible for planning, organizing, and administering juvenile intake, probation, and aftercare services in all judicial districts to the end that juvenile services will be uniform throughout the State and of sufficient quality to meet the needs of the juveniles under supervision.

" § 7A-666. Duties and Powers of Assistant Director of Court Services. - The Assistant Director of Court Services shall serve under the supervision of the Director of the Office of Juvenile Justice and shall assist the Director in performing the following powers and duties of his office:

- (1) To plan for a statewide program of juvenile intake, probation, and aftercare services;
- (2) To appoint the Chief Court Counselor in each judicial district;
- (3) To appoint such personnel within the Division of Court Services as may be necessary to administer a state-

wide and uniform system of juvenile intake, probation, and aftercare;

(4) To develop, promulgate, and enforce the policies, procedures, rules, and regulations as he may find necessary and appropriate to implement a statewide and uniform program of juvenile intake, probation, and aftercare services.

" § 7A-667. Duties and Powers of Chief Court Counselors. -

The Chief Court Counselor in each judicial district shall have the following powers and duties:

(1) To supervise and direct the program of juvenile intake, probation, and aftercare services within the district;

(2) To appoint intake counselors, court counselors, secretaries, and other personnel in accordance with the personnel policies adopted by the Director;

(3) To provide in-service training for staff;

(4) To keep records and make reports as may be requested by the Director in order to provide statewide data and information about juvenile needs and services.

" § 7A-668. Duties and Powers of Court Counselors. - All court counselors providing services in juvenile cases shall have the following powers and duties:

(1) To assist the judge as requested in matters related to juveniles within the jurisdiction of the court

as delinquent, undisciplined, abused, neglected, or dependent or within the Interstate Compact on Juveniles. This provision shall not be construed to deprive the Department of Social Services of the functions assigned to it by law in the area of abused, neglected, or dependent juveniles.

(2) To secure or arrange for information concerning a case the judge may require before, during, or after a hearing;

(3) To appear and testify at court hearings;

(4) To assume temporary custody of a juvenile pursuant to G.S. § 7A-536 or when so directed by court order;

(5) To assist the judge in handling cases where a juvenile alleged or adjudicated delinquent or undisciplined needs detention care prior to or after a hearing to determine the need for detention, or pending admission of the juvenile to a training school or other residential program as authorized by G.S. § 7A-586;

(6) To assist the court in finding necessary treatment, services, or residential placement for a juvenile who is under court supervision;

(7) To furnish each juvenile on probation and his parent with a written statement of the conditions of probation and to consult with the parent, guardian, or custodian so that the family may help the juvenile with his probation;

(8) To keep informed concerning the conduct and progress of any juvenile on probation or under court supervision through home visits or conferences with the parent, guardian, or custodian;

(9) To see that the conditions of probation are complied with by the juvenile or to bring any juvenile who violates his probation to the attention of the court;

(10) To make periodic reports to the judge concerning the adjustment of any juvenile on probation or under court supervision;

(11) To bring any juvenile on probation to the attention of the judge for review and termination when the juvenile's period of probation is ended as provided by G.S. § 7A-592; the counselor may also recommend termination of probation prior to the end of the juvenile's period of probation when such a recommendation is merited by the progress and adjustment of the juvenile.

(12) To provide supervision for a juvenile transferred to his supervision from another court or another state, and to provide supervision for any juvenile released from a residential program operated by the Division of Institutional Services.

(13) To keep informed concerning the conduct and progress of any juvenile committed to the Division of Institutional Services by regularly visiting the juvenile and his parent, guardian, or custodian.

"ARTICLE 62.

"DIVISION OF INSTITUTIONAL SERVICES.

" § 7A-669. Division of Institutional Services. - There is hereby established, within the Office of Juvenile Justice, the Division of Institutional Services which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations. This Division is responsible for administration of the training schools of the State and for the implementation of a statewide regional approach to juvenile detention. It is further intended that residential and detention programs provide appropriate treatment according to the needs of juveniles in care including the following programs or services: educational; clinical and psychological; psychiatric; social; medical; vocational, recreational; and others as identified as appropriate by the Assistant Director. The Division shall coordinate these programs with other services for juveniles within the Office of Juvenile Justice and with services being provided by the Department of Human Resources.

" § 7A-670. Duties and Powers of Assistant Director of Institutional Services. - The Assistant Director of Institutional Services shall serve under the supervision of the Director of the Office of Juvenile Justice and shall assist the Director in performing the following powers and duties of his office:

(1) To assure quality in services within the training schools which shall be designed to meet the needs of juveniles in care or receiving services;

(2) To develop a sound admission or intake program to the training schools, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement;

(3) To provide a quality educational program in each training school, including vocational education which is realistic in relation to available jobs, and to administer this educational system with the advice of the Youth Services Advisory Committee;

(4) To encourage visits by parents and responsible relatives of juveniles in care and to arrange a suitable program of home visits;

(5) To give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish;

(6) To develop and publish minimum standards for the construction and operation of local juvenile confinement facilities;

(7) To develop, promulgate, and enforce the policies, procedures, rules, and regulations as he may find necessary and appropriate to implement a statewide and uniform program of institutional services.

" § 7A-671. Authority to Provide Necessary Medical or Surgical Care. - The Division of Institutional Services is authorized to provide such medical and surgical treatment as is necessary to preserve the life and health of a juvenile while in care, provided that no surgical operation may be performed except as authorized in G.S. § 130-191 and G.S. § 7A-654.

" § 7A-672. Compensation to Juvenile in Care. - A juvenile who has been committed to the Office may be compensated for work or participation in training programs at rates approved by the Assistant Director within available funds. The Assistant Director is authorized to accept grants or funds from any source to compensate a juvenile as provided under this section.

" § 7A-673. Criminal Offense to Aid Escapes. - It is unlawful for any person to aid, harbor, conceal or assist any juvenile to escape from an institution or youth services program. Any person who renders said assistance to a juvenile shall be guilty of a misdemeanor.

" § 7A-674. Clinical Chaplains for Persons Committed to Training Schools. - The Office of Juvenile Justice is authorized and directed to employ clinical chaplains to provide moral, religious, and social counseling to boys and girls committed to

the training schools of the Division of Institutional Services. The Office of Juvenile Justice shall seek to employ a diversity of qualified persons having differing faiths which are, to the extent practical, reflective of the professed religious composition of the student population of the residential facilities.

" § 7A-675. Minimum Standards. - Standards for the construction and operation of detention facilities and facilities of the Division of Institutional Services shall be developed by the Director of the Office of Juvenile Justice to provide secure custody of juveniles, to protect their health and welfare, and to provide humane treatment. The standards shall establish criteria for:

- (1) Secure and safe physical facilities;
- (2) Jail design;
- (3) Adequacy of space per juvenile;
- (4) Heat, light, and ventilation;
- (5) Supervision of juveniles;
- (6) Personal hygiene and comfort of juveniles;
- (7) Medical care for juveniles;
- (8) Sanitation;
- (9) Food allowances, food preparation and food handling;
- (10) Educational and recreational programs; and
- (11) Any other provisions that may be necessary for the safe-keeping, privacy, care, protection, and welfare of juveniles.

"ARTICLE 63.

"REGIONAL DETENTION.

" § 7A-676. Regional Detention Services. - The Office of Juvenile Justice is responsible for juvenile detention services.

(1) The Office of Juvenile Justice shall plan with the counties operating a county detention home to provide regional juvenile detention services to surrounding counties. The Office shall have some discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate variable factors.

(2) The Office of Juvenile Justice shall plan for and administer five or more regional detention homes. Planning shall include a study considering location, architectural design, construction, and administration of a program to meet the needs of a juvenile in juvenile detention care. Both the physical facility and the program of a regional detention home shall comply with State standards developed pursuant to G.S. § 7A-675 and in compliance with this Article.

" § 7A-677. Authority for Implementation. - In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Office of Juvenile Justice shall have legal authority to do the following:

(1) To develop rules and regulations which may be necessary to fulfill its responsibilities under this Act;

(2) To plan with counties operating county detention homes to provide regional services and to upgrade physical facilities, to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards developed pursuant to G.S. § 7A-675.

(3) To develop pilot programs to demonstrate quality juvenile detention care on a regional basis that meet State standards;

(4) To develop a plan to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility;

(5) To seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources.

" § 7A-678. State Subsidy to County Detention Homes. - The Office of Juvenile Justice shall develop a State subsidy program to pay a county detention home which provides regional juvenile detention services and meets State standards a certain portion of its operating costs and its per capita daily cost per juvenile for any juvenile cared for from another county. In general, this subsidy should be fifty percent (50%) of the operating costs of

a county detention home and one hundred percent (100%) of the per capita daily cost of caring for a juvenile from another county; any county placing a juvenile in the county detention home of another county providing regional juvenile detention services or a regional detention home should pay fifty percent (50%) of the per capita daily cost of caring for the juvenile to the Office. The exact funding formulas may be varied by the Office to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

" § 7A-679. Detention Standards and Services. - In developing detention standards as required by G.S. § 7A-675, the Director of the Office of Juvenile Justice shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The Director shall also consult with interested State departments and agencies, including the Department of Human Resources and the Department of Insurance.

Before the standards or any amendments thereto may become effective, they must be approved by the Youth Services Advisory Committee. Upon becoming effective, they have the force and effect of law.

" § 7A-680. Standards and Inspections. - The legal responsibility of the Director of the Office of Juvenile Justice for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Office of Juvenile Justice is hereby expanded to give said Office the same legal responsibility as to the state-administered regional detention homes which shall be developed as provided by G.S. § 7A-675.

The Director of the Office of Juvenile Justice shall implement standards developed for county detention homes and regional detention homes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable.

The Director of the Office of Juvenile Justice shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any juvenile placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any juvenile placed in the holdover facility for the protection of the juvenile.

" § 7A-681. Inspections of Local Detention and Holdover Facilities. - Office personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement and treatment of juveniles and to determine whether the facility meets the minimum standards published pursuant to G.S. § 7A-675. The inspector shall make a written report of each inspection and submit it within thirty days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards.

" § 7A-682. Enforcement of Minimum Standards. - If an inspection conducted pursuant to G.S. § 7A-681 discloses that a local confinement facility does not meet the minimum standards published pursuant to G.S. § 7A-675 and, in addition, if the Director determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Director may order corrective action or close the facility, as provided in this section:

(1) The Director shall give notice of his determination to the governing body and each other local official responsi-

ble for the facility. The Director shall also send a copy of this notice, along with a copy of the inspector's report, to the senior regular resident Superior Court Judge for the judicial district in which the facility is located. Upon receipt of the Director's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within twenty days after the day the Director's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within thirty days after the day the Director's notice is received, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) If the governing body does not within the thirty day period either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Director may order that the facility be closed. The Director shall by registered mail give notice of his order of closure to the governing body and each other local official responsible for the facility and to the senior regular resident Superior Court Judge. The order shall provide for its effective date.

(4) The governing body may appeal an order of the Director to the senior regular resident Superior Court Judge.

The governing body shall initiate the appeal by giving by registered mail to the judge and to the Director notice of its intention to appeal. The notice must be given within fifteen days after the day the Director's order is received. If notice is not given within the fifteen day period, the right to appeal is terminated.

(5) The senior regular resident Superior Court Judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Director, the governing body, and each other local official involved. The judge shall conduct the hearing without a jury. The Director, the governing body, and each other local official may give any evidence the judge finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Director's order.

" § 7A-683. Supervision of Local Confinement Facilities. -

(1) No juvenile may be confined in a local confinement facility unless custodial personnel are present and available to provide continuous supervision in order that custody will be secure and that, in event of emergency, such as fire, illness, assaults by others detained, or otherwise, the juveniles can be protected. These personnel shall supervise juveniles closely enough to

maintain safe custody and control and to be at all times informed of the juveniles' general health and emergency medical needs.

(2) In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care. If a physician designated in the plan is not available, the personnel shall secure medical services from any licensed physician who is available. The unit operating the facility shall pay the cost of emergency medical services.

(3) If a person violates any provision of this section, he is guilty of a misdemeanor.

" § 7A-684. Medical Care of Juveniles. - (1) Each unit that operates a local confinement facility shall develop a plan for providing medical care for juveniles in the facility. The plan

(a) Shall be designed to protect the health and welfare of the juveniles and to avoid the spread of contagious disease;

(b) Shall provide for medical supervision of juveniles detained and emergency medical care for those juveniles to the extent necessary for their health and welfare;

(c) Shall provide for the detection, examination, and treatment of juveniles detained, who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and

the local medical society. The plan must be approved by the local or district health director, upon a determination that the plan is adequate to protect the health and welfare of the juveniles, and must be adopted by the governing body.

(2) If a juvenile in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Director of the Office of Juvenile Justice. The report shall be made on forms provided by the State Board of Health, and the Board of Health shall develop and distribute these forms.

(3) If a person violates any provision of this section (including the requirements regarding G.S. § 130-97 and G.S. § 130-121), he is guilty of a misdemeanor.

" § 7A-685. Sanitation and Food. - The rules and regulations adopted by the Commission for Health Services pursuant to G.S. § 153A-226 and the procedure for inspection as set out in that statute shall apply to detention and holdover facilities.

" § 7A-686. Training of Detention Personnel. - (1) The Director of the Office of Juvenile Justice shall provide for a training program for supervisory and administrative personnel of local detention facilities. These personnel include the

sheriff and other elected or appointed officials. The Director shall develop the training program in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and the North Carolina Juvenile Detention Administrators Association. To the extent feasible, the training should be provided through the existing educational resources of the State.

(2) Except on a temporary or probationary basis, no person (including elected officials) may serve as an administrator of a local detention facility unless he has successfully completed an approved program of training established pursuant to subsection (1) of this section. No person may serve on a temporary or probationary basis for longer than one year.

" § 7A-687. Separation of Sexes; Jailer's Report. - Provisions and requirements set out in G.S. § 153A-228 and G.S. § 153A-229 shall apply to holdover facilities of county jails.

"ARTICLE 64.

"YOUTH SERVICES ADVISORY COMMITTEE.

" § 7A-688. Committee Created; Duties. The Youth Services Advisory Committee of the Office of Juvenile Justice shall advise the Director of the Office of Juvenile Justice in the development of juvenile justice programs. The Youth Services Advisory Committee has the following duties:

(1) To study available literature and research findings concerning juvenile delinquency, its causes, and various treatment models, and to make recommendations to the Director regarding programs which will provide effective treatment and rehabilitation for juveniles in residential facilities and in community-based programs;

(2) To advise the Director in encouraging the development of delinquency prevention programs and community-based services by private groups so that the programs can be responsive to local needs, so that local leadership and private groups can be responsible for their programs, so that programs which meet State standards can be assisted by available State and federal funds, and so that available private funds can be utilized with State, federal and local government funds when appropriate;

(3) To advise the Director of its recommendations for the development of a program which would coordinate the resources of State government within the appropriate departments in order to provide technical assistance to local areas within the State in

planning delinquency prevention programs and community-based services for youth;

(4) To advise the Director of its recommendations for program evaluation standards for delinquency prevention programs; community-based services, both residential and nonresidential; and institutional treatment programs;

(5) To advise the Director in the development of delinquency prevention programs and community-based services under public auspices where there is no local private leadership;

(6) To make recommendations to the Director for transmittal to the Juvenile Justice Planning Committee of the Governor's Crime Commission as it develops a comprehensive plan for juvenile justice;

(7) To make recommendations to the Director when he considers proposed standards for the placement and supervision of delinquent juveniles under the authority of G.S. § 7A-670;

(8) To review for the Director any applications referred to it for federal funds for institutional facilities, delinquency prevention programs and community-based services and to make recommendations to the Director on the Office's priorities for such proposed programs and the appropriate use of available federal funds; and

(9) To advise and assist the Director on any other matter which the Director may refer to it.

" § 7A-689. Composition of Committee; Terms; Vacancies; Meetings; Expenses. - The Youth Services Advisory Committee consists of eleven members. The Chief Justice or his designee from among the Associate Justices shall appoint two members: one person who represents a local delinquency program and one concerned citizen who has some knowledge about juvenile delinquency, community-based services, and institutional facilities. The Governor shall appoint two members: concerned citizens who have some knowledge about juvenile delinquency, community-based services, and institutional facilities. One member shall be the Superintendent of Public Instruction or his designee. One member shall be the Secretary of the Department of Human Resources or his designee. One member shall be the Chairman of the Governor's Advocacy Council on Children and Youth.

Four members interested in addressing the problems of juvenile delinquency shall be appointed from the General Assembly: two by the Speaker of the House of Representatives and two by the President of the Senate.

Initial appointments to the Committee shall be made as soon as practical after July 1, 1980, but no later than August 1, 1980, for terms that expire on July 1, 1981. Thereafter, the appointment of members shall be made as provided for terms of two years. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Committee shall meet at least quarterly and may hold special meetings at any time and place within the State on the call of the chairman or upon the written request of five members. A majority of the Committee members shall constitute a quorum for the transaction of business. The Chief Justice or his designee from among the Associate Justices shall select the chairman from the Committee members. The Committee shall elect a vice-chairman who shall serve for a term of one year.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. § 138-5.

The Chief Justice or his designee from among the Associate Justices shall have the power to remove any member of the Committee from office for misfeasance, malfeasance, or nonfeasance in accordance with G.S. § 143B-16.

All necessary clerical and other services required by the Committee shall be supplied by the Director of the Office of Juvenile Justice.

Sec. 2. The following sections of the General Statutes are repealed: G.S. § 110-23, G.S. § 134A-1 through G.S. § 134A-2, G.S. § 134A-6, G.S. § 134A-8, G.S. § 134A-20 through G.S. § 134A-22, G.S. § 134A-25 through G.S. § 134A-26, G.S. § 134A-28, and G.S. § 134A-36 through G.S. § 134A-39.

-----SEVERABILITY CLAUSE

Sec. 3. If any section or provision of this Act be declared unconstitutional or invalid by the courts, the same shall not affect the validity of the Act as a whole or any part other than the part so declared to be unconstitutional or invalid.

-----EFFECTIVE DATE

Sec. 4. This Act shall become effective January 1, 1980.

COMMENTARY

The Juvenile Code Revision Committee discussed at length the organization and placement of a single agency. Following endorsement by the Committee of a single agency concept, Barbara W. Sarudy was delegated the responsibility of detailing the concept for presentation to the Committee. Mrs. Sarudy assembled a vast amount of material for the Committee including organizational diagrams (See Appendix V) and a draft (See Appendix VI). Some of the material submitted by Mrs. Sarudy to and approved by the Committee is contained in this report under the "Single Agency Concept" within recommendations concerning the co-ordination of services. Based on Mrs. Sarudy's work, the Chairman with the staff, Richard Martin of the Department of Crime Control and Public Safety, and Susan Sabre of the Bill Drafting Office of the Legislature prepared the bill preceeding this commentary and the derivations follow:

Proposed Statute

Derived from

Article 59

G.S. § 7A-655

New Section

G.S. § 7A-656

New Section

G.S. § 7A-657

New Section

G.S. § 7A-658

G.S. § 134A-6

G.S. § 7A-659

New Section

G.S. § 7A-660

(1)

G.S. § 7A-343 (4)

(2)

G.S. § 7A-289.16 (5)

(3)

G.S. § 7A-289.4 (5)

(4)

G.S. § 134A-8 (4)

(5)	G.S. § 7A-289.14 (3)
(6)	G.S. § 7A-343 (6)
(7)	G.S. § 134A-8 (2)
G.S. § 7A-661	G.S. § 7A-289.13
G.S. § 7A-662	
(1)	G.S. § 7A-289.14 (4)
(2)	G.S. § 7A-289.14 (6)
(3)	G.S. § 7A-289.14 (7)
G.S. § 7A-663	G.S. § 7A-289.15
G.S. § 7A-664	G.S. § 7A-289.16

Article 61

G.S. § 7A-665	G.S. § 7A-289.1
G.S. § 7A-666	
(1)	G.S. § 7A-289.4 (1)
(2)	G.S. § 7A-289.4 (3)
(3)	G.S. § 7A-289.4 (2)
(4)	G.S. § 7A-289.4 (6)
G.S. § 7A-667	
(1)	G.S. § 7A-289.5 (2)
(2)	G.S. § 7A-289.5 (1)
(3)	G.S. § 7A-289.5 (3)
(4)	G.S. § 7A-289.5 (4)
G.S. § 7A-668	
(1)	G.S. § 7A-289.6 (4)
(2)	G.S. § 110-23 (1)

(3)	G.S. § 110-23 (3)
(4)	G.S. § 110-23 (4)
(5)	G.S. § 7A-289.6 (2)
(6)	G.S. § 7A-289.6 (1)
(7)	G.S. § 110-23 (5)
(8)	G.S. § 110-23 (6)
(9)	G.S. § 110-23 (7)
(10)	G.S. § 110-23 (8)
(11)	G.S. § 7A-289.6 (3)
(12).	G.S. § 110-23 (12)
(13)	New Section

Article 62

G.S. § 7A-669	G.S. § 134A-20
G.S. § 7A-670	
(1)	G.S. § 134A-8 (4)
(2)	G.S. § 134A-8 (3)
(3)	G.S. § 134A-8 (5)
(4)	G.S. § 134A-26
(5)	G.S. § 134A-8 (1)
(6)	G.S. § 153A-220 (2)
(7)	New Section
G.S. § 7A-671	G.S. § 134A-21
G.S. § 7A-672	G.S. § 134A-22
G.S. § 7A-673	G.S. § 134A-25
G.S. § 7A-674	G.S. § 134A-28

G.S. § 7A-675

G.S. § 153A-221

Article 63

G.S. § 7A-676 (1) and (2)

G.S. § 134A-37 (1) and (2)

G.S. § 7A-677

(1)

G.S. § 134A-39 (1)

(2)

G.S. § 134A-39 (2)

(3)

G.S. § 134A-39 (3)

(4)

G.S. § 134A-39 (4)

(5)

G.S. § 134A-39 (5)

G.S. § 7A-678

G.S. § 134A-38

G.S. § 7A-679

G.S. § 153A-221 (b)

G.S. § 7A-680

G.S. § 153A-221.1

G.S. § 7A-681

G.S. § 153A-222

G.S. § 7A-682

G.S. § 153A-223

G.S. § 7A-683

G.S. § 153A-224

G.S. § 7A-684

G.S. § 153A-225

G.S. § 7A-685

G.S. § 153A-226

G.S. § 7A-686

G.S. § 153A-227

G.S. § 7A-687

G.S. § 153A-228;

G.S. § 153A-229

Article 64

G.S. § 7A-688

G.S. § 143B-207

G.S. § 7A-689

G.S. § 143B-208

RECOMMENDED STATUTORY CHANGES
NOT INCLUDED IN THE JUVENILE CODE

The Committee recommends that G.S. § 14-21, Rape; punishment in the first and second degree, be amended as follows:

" § 14-21. Rape; punishment in the first and second degree. Every person who ravishes and carnally knows any female of the age of 12 years or more by force and against her will, or who unlawfully and carnally knows and abuses any female child under the age of 12 years, shall be guilty of rape, and upon conviction, shall be punished as follows:

(1) First-Degree Rape -

- a. If the person guilty of rape is more than 16 years of age, and the rape victim is a virtuous female child under the age of 12 years, the punishment shall be death; or
- b. If the person guilty of rape is more than 16 years of age, and the rape victim had her resistance overcome or her submission procured by the use of a deadly weapon, or by the infliction of serious bodily injury to her, the punishment shall be death.

(2) Second-Degree Rape - Any other offense of rape defined in this section shall be a lesser-included offense of rape in the first degree and shall be punished by imprisonment in the State's prison

for life, or for a term of years, in the discretion of the court.

There shall be no presumption of incapacity to commit the crimes of rape or assault with intent to commit rape by reason of the age of the offender.

COMMENTARY

The proposed revision of G.S. § 14-21 would make no change other than the addition of a final sentence, abolishing the outdated case law presumption of incapacity to commit rape by a juvenile under

14 years of age. See State v. Pugh, 52 N.C. 61 (1859); State v. Gray, 53 N.C. 170 (1860); State v. Sam, 60 N.C. 293 (1864).

The Committee recommends that G.S. § 14-316.1, Contributing to delinquency and neglect by parents and others, be amended to delete (a) and to read as follows:

Any person over 16 years of age who knowingly or wilfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. § 7A-507 or who engages in sexual intercourse with such juvenile shall be guilty of a misdemeanor.

It shall not be necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined,

abused, or neglected in order to prosecute a parent or any other person including an employee of the Office of Juvenile Justice under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Office of Juvenile Justice who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile.

COMMENTARY

The proposed revision of G.S. § 14-361.1 would delete (a) for two reasons. First of all, the Committee felt that the language was overly vague and could conceivably subject good parents to needless prosecution. In addition, the Committee believes that subsection (b), which is retained in the proposed revision, covers all actions which the State should justifiably press under subsection (a), using more precise language.

Subsections (b) and (c) of G.S. § 14-361.1 have been retained in the proposed revision with a number of modifications. To begin with, the scope of those subject to prosecution has been narrowed to those seventeen and older. The Committee basically believed that the statute was designed to regulate conduct by older individuals on younger more impressionable minds. On the other hand, the range of individuals protected by the statute has been broadened.

The proposed statute would apply to any child within the jurisdiction of the court, not just those under 16.

Finally, a statement has been added making it clear that staff members of our state's training schools and detention facilities or any other employee of the Office of Juvenile Justice are subject to prosecution under this statute.

The Committee recommends that the following be enacted as an addition to the General Compulsory Attendance Law, G.S. § 115-166:

The principal shall notify the parent, guardian, or custodian of his child's excessive number of absences from school after his child has five unexcused consecutive absences or ten unexcused accumulated absences whichever occurs first and shall notify the parent, guardian, or custodian by certified mail that he may be prosecuted under the General Compulsory Attendance Law. Further, after the child has missed five unexcused consecutive school days or has accumulated 10 unexcused absences, the school attendance counselor shall visit the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law enforcement officer accompany him.

Upon said notification and after 30 unexcused accumulated absences, the burden of proof will be on the child's parent, guardian, or custodian to demonstrate that he is not responsible for the absences. Unless the prosecutor is notified earlier the principal shall notify the prosecutor after 30 unexcused absences.

Wilful failure to comply with the notification provisions of this statute shall be punishable by a fine of not more than \$50.00.

COMMENTARY

This proposed addition to G.S. § 115-166 seeks to assure that the intent of the law--to assure that every child attends school-- is carried out.

The principal is required to notify the child's parents, guardian, or custodian if their child has five consecutive unexcused absences. The intent is to be certain that parents are aware of the problem and to solicit their assistance in curbing truancy. The notice must be by certified mail and must contain a warning that if truancy continues, the parents may be prosecuted. It is not the intention of the Committee to discourage notice to parents at an earlier point in time. In fact the Committee believes that every single unexcused absence is significant and hopes that many schools will move more swiftly to confront this problem. However, realizing that difficulties in geography, personnel, and funding do exist to limit the ability of some schools to act, the Committee is proposing these limits as a means of indicating when a serious problem may be brewing which requires immediate attention.

An attendance counselor also must visit the child and his family to attempt to resolve any problems which may be causing the absences. For his own personal protection, he may request that a law enforcement officer accompany him.

After the notification, if the absences continue and reach 30 unexcused absences, the parents may be prosecuted and must prove that they are not responsible for the child's absences. At that point in time, the principal must notify the District Attorney's office, although, as stated earlier, it is hoped that schools will respond to this problem much sooner.

Finally, there is a possible \$50.00 fine for wilful failure to carry out the duties imposed by the revision.

The Committee recommends that G.S. § 7A-147 (c) be amended to read as follows:

(c) The policy of the State is to encourage specialization in juvenile cases by district court judges who are qualified by training and temperament to be effective in relating to youth and in the use of appropriate community resources to meet their needs. The Administrative Office of the Courts is therefore authorized to encourage judges who hear juvenile cases to secure appropriate training whether or not they were elected to a specialized judgeship as provided herein. Such training shall be provided within the funds available to the Administrative Office of the Courts for such training, and judges attending such training shall be reimbursed for travel and subsistence expenses at the same rate as is applicable to other State employees.

The Administrative Office of the Courts shall develop a plan whereby a district court judge may be certified as qualified to hear juvenile cases by reason of training, experience and demonstrated ability. Any district court judge who meets such certification requirements shall receive a certificate to this effect from the Administrative Office of the Courts. In districts where there is a district court judge who is certified as qualified to hear juvenile cases as herein provided, the chief district

judge shall assign such cases to this judge where practical and feasible.

COMMENTARY

The proposed revision of G.S. § 7A-147 (c) changes only three words from the original text. In the first line of the second paragraph the word "shall" replaces the words "is authorized to...."

The Committee believes that judges who hear juvenile matters should receive special training to prepare them for this area of law. The General Assembly has encouraged specialization and certification by its passage of G.S. § 7A-147. However, to date there have been no judgeships designated as specialized for juvenile justice, no district court judges have been certified as qualified to hear juvenile cases, and no certification plan has been forthcoming from the Administrative Office of the Courts.

The Committee considered a recommendation that would mandate that there be a specialized juvenile judgeship in every judicial district filled by a judge certified to hear juvenile cases. Realistically, however, the Committee realizes that this would be impractical in some districts, due to small juvenile caseloads and districts with only two or three judges.

The Committee is recommending in another part of this report that the Courts Commission be recreated and that that body should consider creating special judicial districts for juvenile cases, served by certified juvenile justice specialists. In anticipation of that possibility, and also to encourage judges presently interested in this area to receive training, the Committee recommends the proposed revision of G.S. § 7A-147 (c) to require the Administrative Office of the Courts to develop a course of instruction that will better prepare judges to preside over juvenile hearings.

The Committee recommends that G.S. § 15A-502 (c) be repealed.

COMMENTARY

The Juvenile Code Revision Committee recognizes the importance in clarifying G.S. § 15A-502 (c) and has done so in G.S. § 7A-550 through G.S. § 7A-556 of the Proposed North Carolina Juvenile Code. The Commentary

following each of those sections explains the proposed statute and its relationship to existing law.

The Committee recommends that G.S. § 7A-343 (4) and (8) be amended as follows:

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department exclusive of the Office of Juvenile Justice and authorize expenditures from funds appropriated for these purposes.

(8) Prepare and submit an annual report on the work of the Judicial Department exclusive of the Office of Juvenile Justice and transmit a copy to each member of the General Assembly.

COMMENTARY

The Juvenile Code Revision Committee believes that the Office of Juvenile Justice should be the lead agency in focusing attention on the troubled children of this State. In order for the Office to effectively achieve this goal, it must be able to address the Legislature as a highly visible advocate. In that position, the Office should be able to prepare a budget that accurately reflects the needs of the juvenile justice system and must be in a position to support and justify financial requests. This

has not been possible in the past due to the fact that juvenile justice needs have been minor line items in the budgets of large departments with often conflicting interests.

The proposed revision of the duties of the Director of the Administrative Office of the Courts merely assures that the Office of Juvenile Justice will be able to function as an independent, unified voice for the children of this State.

APPENDICES

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CHILDREN HELD IN JAIL FOR THE YEAR OF 1977

<u>MONTH</u>	<u>DELINQUENT</u>	<u>UNDISCIPLINED</u>	<u>DETENTION ORDER</u>	<u>TOTAL</u>
January	86	47	76	209
February	68	29	74	171
March	69	63	145	277
April	78	31	124	233
May	72	33	143	248
June	75	29	84	188
July	79	29	112	220
August	53	17	87	157
September	99	40	174	313
October	55	45	132	232
November	63	34	123	220
December	74	12	90	176
Total	871	409	1364	2644

CHILDREN HELD IN DETENTION FACILITIES FOR THE YEAR OF 1977

<u>MONTH</u>	<u>DELINQUENT</u>	<u>UNDISCIPLINED</u>	<u>TOTAL</u>
January	179	115	294
February	204	117	321
March	245	142	387
April	205	135	340
May	211	147	358
June	193	146	339
July	173	135	308
August	168	159	327
September	192	183	375
October	158	169	327
November	239	132	371
December	175	80	255
	2342	1660	4002

1682 more delinquency

Detention Facility	Counties Served	Spaces	How funded and operated
Durham County Youth Home	Durham Alamance Orange Chatham	16	Locally
Buncombe County Juvenile Detention Home	Buncombe	16	Locally
Wake County Juvenile Detention Home	Wake Lee Johnson	14	Locally with state subsidy
Guilford County Juvenile Detention Home	Guilford Alamance Rockingham Randolph	32	Locally
Mecklenburg County Juvenile Diagnostic Center	Mecklenburg Gaston Lincoln	30	Locally
Forsyth County Youth Home	Forsyth, Surry, Stokes, Yadkin, Davie, and Davidson	17	Locally with state subsidy
Lower Cape Fear Juvenile Services Center	Brunswick New Hanover Pender Columbus	18	Locally with state subsidy
Cumberland County Juvenile Detention Home	Cumberland Anson Montgomery Richmond Moore Scotland Hoke Harnette Sampson Bladen Robeson	18	State

SESSION 1977

HOUSE BILL 981

Short Title: Approp. Attendance Counselors.

(Public)

Sponsors: Representatives Edwards; Ray.

Referred to: Appropriations.

April 22, 1977

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE STATE BOARD OF EDUCATION TO
EMPLOY TRAINED AND QUALIFIED ATTENDANCE COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly
that trained and qualified attendance counselors shall be
provided to local education agencies from State funds to provide
a ratio of one counselor for every 5,000 students in average
daily membership or major fraction thereof.

Sec. 2. Minimum standards for said attendance
counselors shall be a bachelor's degree, exception being provided
for those persons having been employed prior to the enactment of
this provision. Certification requirements for attendance
counselors shall be established by the State Board of Education
within 90 days of the ratification of this act.

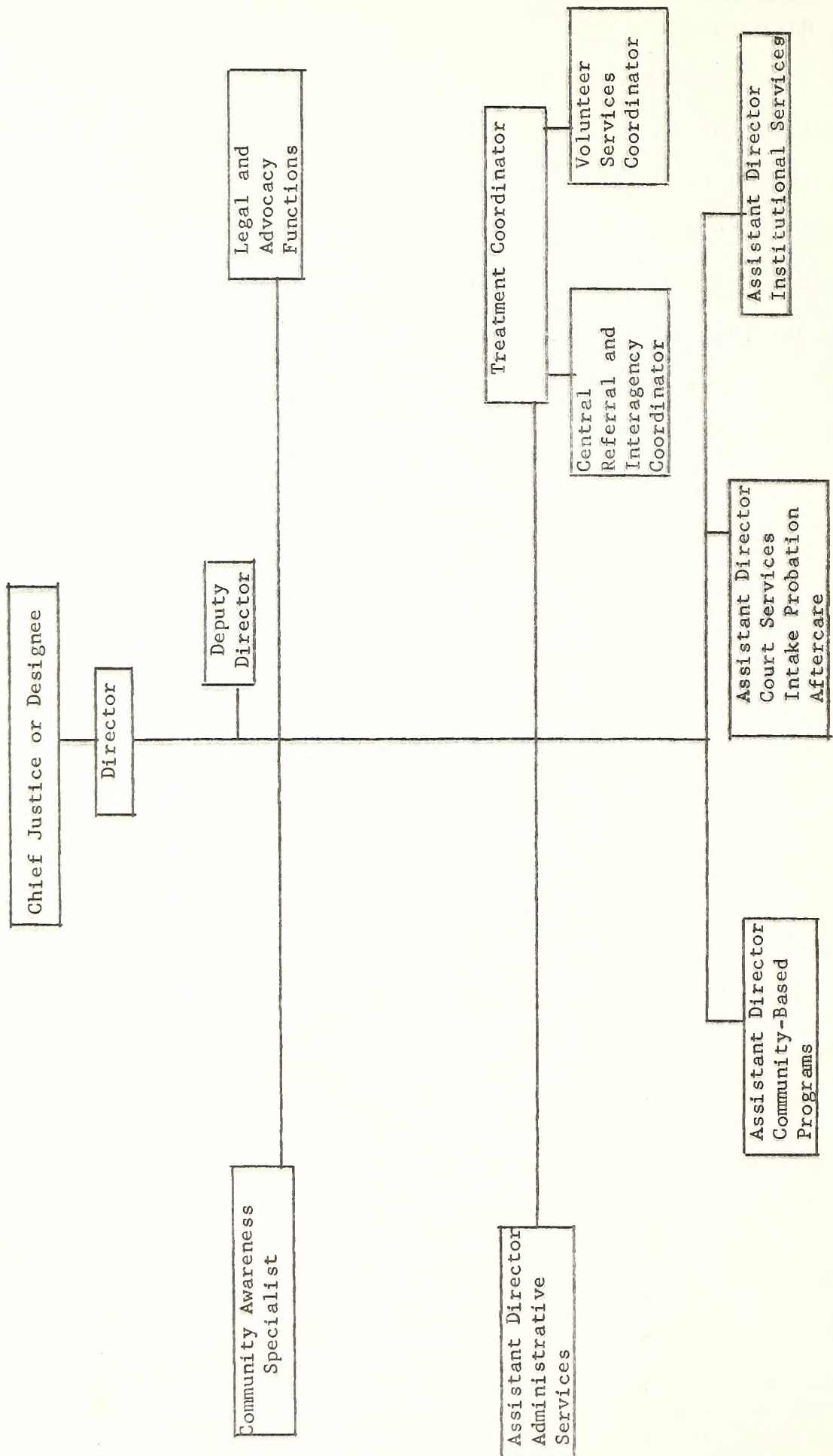
Sec. 3. The rate of pay of attendance counselors shall
be the same as that of entry level teachers except that they
shall be salaried for 12 months. Guidelines and such other
regulations as are necessary to define the function of attendance
counselors shall be established through policy by the State Board

1 of Education.

2 Sec. 4. There is hereby appropriated from the General
3 Fund to the State Board the amount of two million eight hundred
4 thousand dollars (\$2,800,000) for 1977-78 and three million one
5 hundred twenty thousand dollars (\$3,120,000) for 1978-79 to
6 enable the board to allot a total of 860 attendance counselors
7 to the 145 school administrative units.

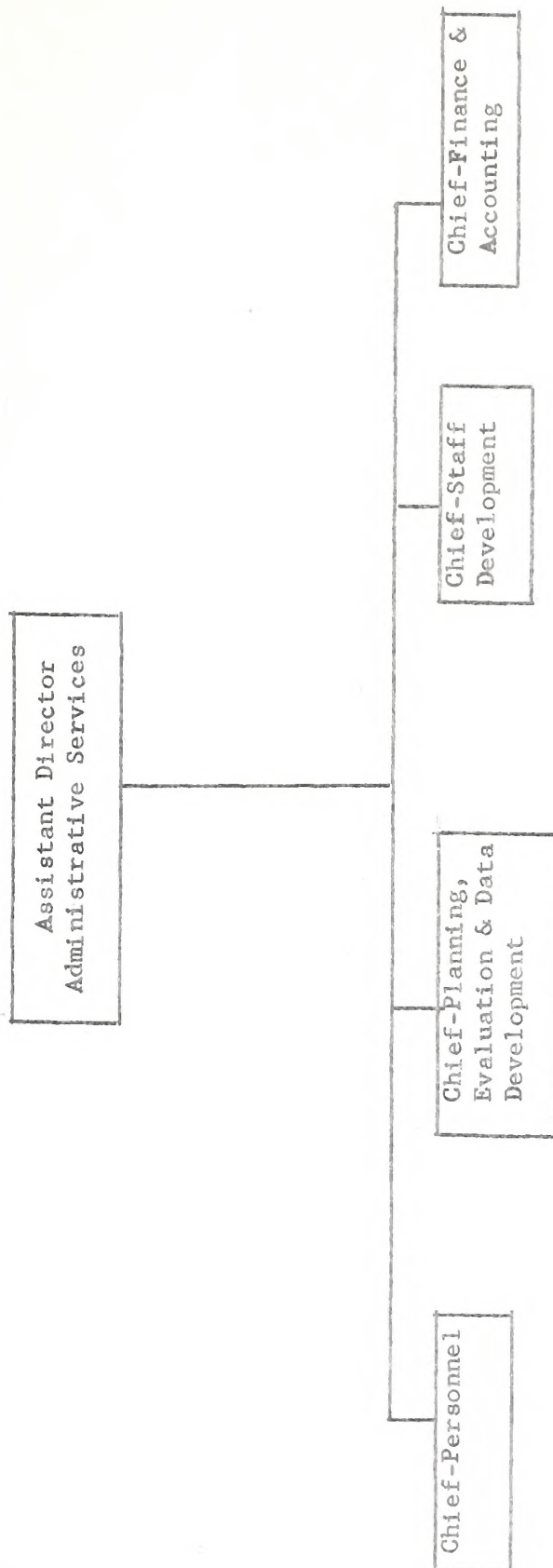
8 Sec. 5. This act shall become effective on July 1,
9 1977.

OFFICE OF JUVENILE JUSTICE



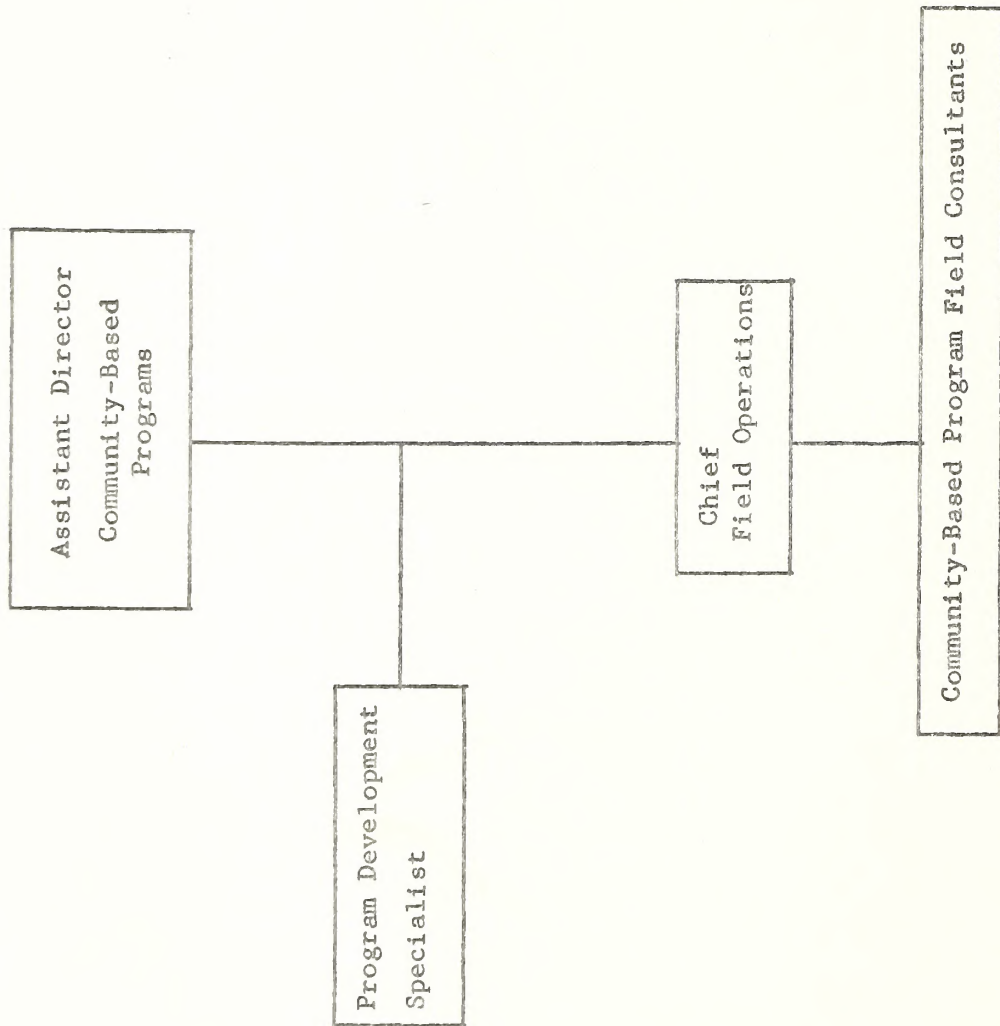
Plus existing administrative and clerical support staff.

ADMINISTRATIVE SERVICES



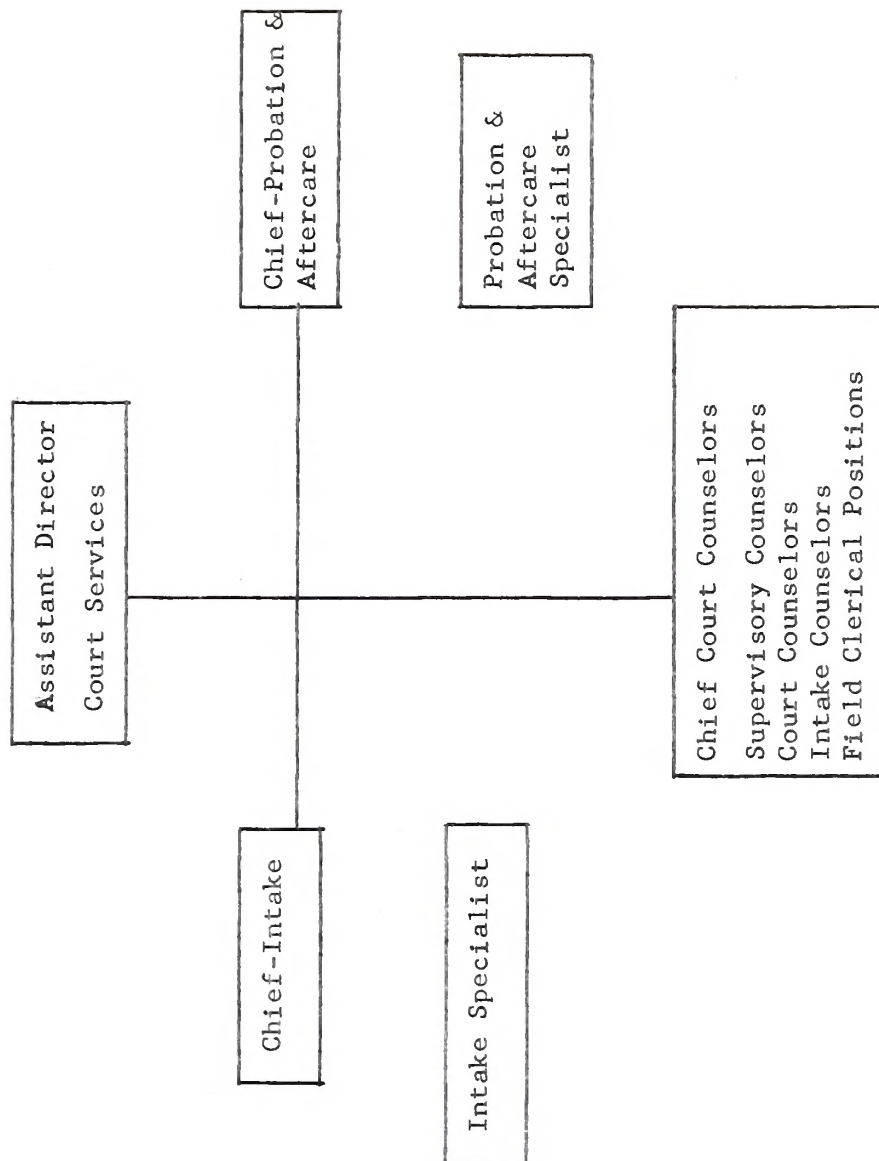
Plus existing clerical
and administrative
support staff.

COMMUNITY-BASED PROGRAMS



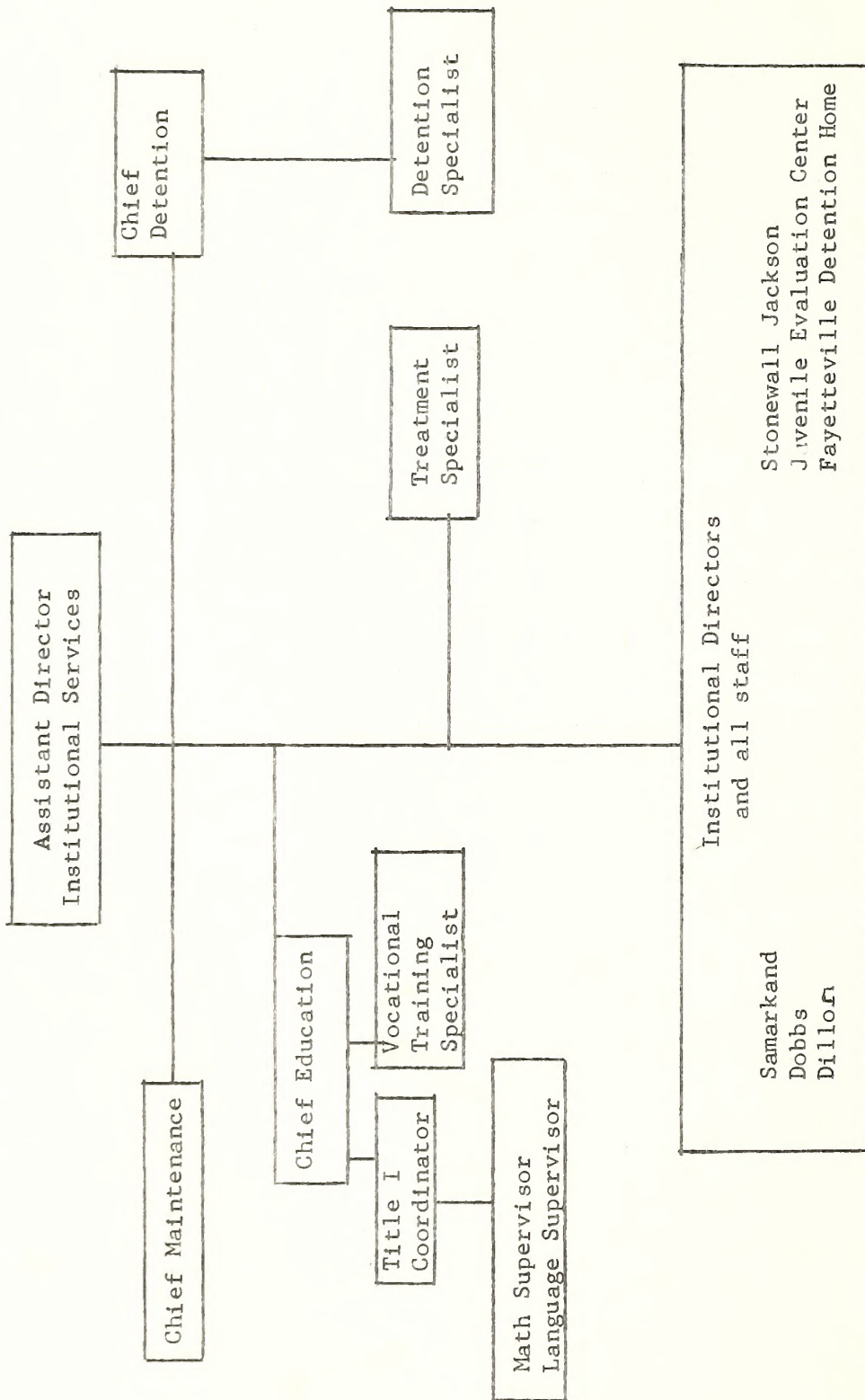
Plus existing administrative
and clerical support staff.

COURT SERVICES



Plus existing clerical and administrative support staff.

INSTITUTIONAL SERVICES



Plus existing clerical and administrative support staff.

AN ACT TO ESTABLISH THE OFFICE OF JUVENILE JUSTICE

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to G.S. Chapter 7A to read as follows:

"ARTICLE

"OFFICE OF JUVENILE JUSTICE.

"PART 1. GENERAL PROVISIONS.

"§ 7A- . Office of Juvenile Justice -- Creation.

There is hereby created and constituted a State Office within the Judicial Department to be known as the Office of Juvenile Justice.

"§ 7A- . Office of Juvenile Justice -- Duties.

It shall be the duty of the Office of Juvenile Justice to:

1. Operate juvenile intake probation and aftercare for juveniles alleged or adjudicated to be within the jurisdiction of the Juvenile Court.
2. Operate state institutions for juvenile delinquents.
3. Coordinate the establishment of community based services for juveniles alleged or adjudicated to be within the jurisdiction of the Juvenile Court and for the prevention of juvenile delinquency.
4. Oversee juvenile detention operations.
5. Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Office of Juvenile Justice and authorize expenditures from funds appropriated for these purposes.

6. Prepare and submit an annual report on the work of the Office of Juvenile Justice to the Chief Justice or his designee from among the Associate Justices, and transmit a copy to each member of the General Assembly.

7. Collect and compile statistical data and conduct evaluations and studies on Juvenile Justice.

8. Prescribe uniform administrative and business methods, systems, forms, and records to be used in the offices of the clerks of superior court relating to Juvenile Justice.

9. Procure, distribute, exchange, transfer, and assign such equipment, books, forms, and supplies as are to be acquired with State funds for the Office of Juvenile Justice.

10. Give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish.

11. Close a State training school when its operation is no longer justified and to transfer State funds appropriated for the operation of any training school which is closed to fund community-based programs or to purchase care or services for pre-delinquents, delinquents or status offenders in community-based or other appropriate programs or to improve the efficiency of existing training schools, provided such actions are approved by the Advisory Budget Commission.

12. Develop a sound admission or intake program to youth services institutions, including the requirement of a careful evaluation of the needs of each child prior to acceptance and placement.

13. Assure quality programs in youth services institutions or youth services programs which shall be designed to meet the needs of children in care or receiving services.

14. Provide a quality educational program in each training school, including vocational education which is realistic in relation to available jobs, and to administer this educational system with the advice of the Youth Services Advisory Committee.

15. Have all other powers of a secretary in relation to a division of youth services or youth services institutions or youth services programs as provided by the Executive Organization Act of 1973 as amended and codified in Chapter 143B or as provided by any other appropriate State law. (1977, c. 627, s.6)

16. Arrange appropriate coordination and planning with the child-serving agencies of the Department of Human Resources and promote interdepartmental coordination.

17. Assist local governments and private service agencies in the development of community-based programs, and to provide information on the availability of potential funding sources and whatever assistance may be requested in making application for needed funding.

18. Approve yearly program evaluations and to make recommendations to the General Assembly concerning continuation funding that might be supported by that evaluation.

19. Approve program evaluation standards by which all programs developed under the provisions of this Article may be objectively evaluated. Minimum operating standards as well as program evaluation standards as may be needed for new program models designed to fulfill the intent of this Article, may be developed at the discretion of the Director by the Director.

20. Develop a formula for funding on a matching basis community-based services. This formula shall be based upon the county-s or counties' relative

ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of youth needs as provided in G.S. 7A-289.16.

21. Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice or his designee from among the Associate Justices.

"§ 7A- . Office of Juvenile Justice -- functions. -- (a) All functions powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Office of Juvenile Justice:

1. The Division of Youth Services, Department of Human Resources;
2. Youth Services Advisory Committee, Department of Human Resources;
3. Juvenile Services Division, Department of Administrative Office of the Courts;

(b) The office shall perform such other functions as may be assigned by the Chief Justice or his designee from among the Associate Justices.

"§ 7A- . Office of Juvenile Justice -- Head. (a) The head of the Office of Juvenile Justice is the Director. The Director shall be appointed by the Chief Justice of the Supreme Court or his designee from among the Associate Justices, to serve at his pleasure. He shall receive the annual salary provided in the Budget Appropriations Act, payable monthly, and reimbursement for travel and subsistence expenses at the same rate as State employees generally.

Service as Director shall be equivalent to service as the Director of the Administrative Office of the Court for purposes of entitlement to retirement pay or to retirement for disability. The Director shall have such powers and duties as are conferred on him by this Article, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State.

(b) The ~~Deputy~~ Director shall be appointed by the Director of the Office of Juvenile Justice. The Deputy ~~Director~~ shall receive the annual salary provided in the Budget Appropriations Act, payable monthly, and reimbursement for travel and subsistence expenses at the same rate as State employees generally. The Director may appoint such other assistants and employees as are necessary to enable him to perform the duties of his office. The Director shall appoint the chief court counselor in each judicial district.

"PART 2

"Division of Youth Services.

"§ 7A- . Division of Youth Services. -- The Division of Youth Services, as provided for in G.S. Chapters 134A and 153A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Office of Juvenile Justice.

"PART 3.

"Youth Services Advisory Committee.

"§ 7A- . Youth Services Advisory Committee. -- The Youth Services Advisory Committee as provided for in G.S. Chapter 143B is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Office of Juvenile Justice.

"PART 4.

"Juvenile Services Division.

"§ 7A- . Juvenile Services Division. - The Juvenile Services Division, as provided for in G.S. Chapters 7A and 110 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Office of Juvenile Justice.

-----DIVISION OF YOUTH SERVICES/CONFORMING CHANGES

Sec. 2. Whenever the words "Department of Human Resources" are used in G.S. 134A-1 through G.S. 134A-39, as said sections appear in the 1977 supplement to 1974 G.S. Replacement Volume 3B, the same shall be deleted and the words "Office of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 3. Whenever the word "Secretary" is used in G.S. 134A-1 through G.S. 134A-39, as said sections appear in the 1977 supplement to 1974 G.S. Replacement volume 3B, the same shall be deleted and the words "Director of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 4. Subsection (8) of G.S. 134A-2, as it appears in the 1977 supplement to 1974 G.S. Replacement Volume 3B, is rewritten to read as follows:

"(8) "Institution" means a school, training school or institution for committed delinquents, namely the following: Stonewall Jackson School; Samarkand Manor School; Dobb's School for Girls; C. A. Dillon School; Juvenile Evaluation Center."

Sec. 5. G.S. 134A-6 as the same appears in the 1977 supplement to 1974 G.S. Replacement Volume 3B is rewritten to read as follows: "All institutions previously operated by the Division of Youth Services of the Department of Human Resources and the present central office of said Division of Youth Services (including land, buildings, equipment, supplies, personnel, or other

properties rented or controlled for youth development purposes are hereby transferred to the Office of Juvenile Services which shall administer such institution and programs as provided by this chapter."

Sec. 6. G.S. 134A-8 as the same appears in the 1977 supplement to 1974 G.S. Replacement Volume 3B is hereby repealed.

Sec. 7. G.S. 134A-19 as it appears in the 1977 supplement to 1974 G.S. Replacement Volume 3B is amended by adding a final sentence to read as follows:

"If the delinquent committed to the Office is a male, he must be accompanied by a male approved by the committing court to the institution or other place designated by the Office of Juvenile Justice."

-----LOCAL CONFINEMENT FACILITIES/CONFORMING CHANGES

Sec. 8. Whenever the words "Department of Human Resources" are used in G.S. 153A-221.1 as said section appears in the 1978 G.S. Replacement Volume 3C, the same shall be deleted and the words "Office of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 9. Whenever the word "Secretary" is used in G.S. 153A-221.1 as said section appears in the 1978 G.S. Replacement Volume 3C, the same shall be deleted and the words "Director of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 10. Whenever the words "Department of Human Resources" are used in G.S. 143B-207 through G.S. 143B-208 as said sections appear in the 1978 G.S. Replacement Volume 3C, the same shall be deleted and the words "Office of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 11. Whenever the word "Secretary" is used in G.S. 143B-207 through G.S. 143B-208, as said sections appear in the 1977 G.S. Replacement Volume 3C, the same shall be deleted and the words "Director of Juvenile Justice" shall be inserted

in lieu thereof.

Sec. 12. G.S. 143B-207(7) as it appears in the 1978 G.S. Replacement Volume 3C is amended on lines 1 and 2 by deleting the words "for transmittal to the Social Services Commission".

Sec. 13. G.S. 143B-208 as it appears in the 1978 Replacement Volume 3C is rewritten to read as follows:

"§ 143B-208. Composition of Committee; terms; vacancies; meetings; expenses, etc. -- The Youth Services Advisory Committee shall consist of 11 members. The Chief Justice or his designee from among the Associate Justices shall appoint two members: one person who represents a local delinquency program and one concerned citizen who has some knowledge about juvenile delinquency, community-based services, and training schools. The Governor shall appoint two members; concerned citizens who have some knowledge about juvenile delinquency, community-based services, and training schools. One member shall be the Superintendent of Public Instruction or his designee. One member shall be the Secretary of the Department of Human Resources or his designee. One member shall be the Chairman of the Governor's Child Advocacy Committee.

Four members shall be appointed from the General Assembly, two by the Speaker of the House of Representatives and two by the President of the Senate, who shall be members of the General Assembly with an interest in youth problems.

Initial appointments to the Committee shall be made as soon as practical after July 1, 1979, but no later than August 1, 1979, for terms that expire on July 1, 1981. Thereafter, the appointment of members shall be made as provided above for terms of two years. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Committee shall meet at least once in each quarter and may hold special meetings at any time and place within the State on the call of the chairman

or upon the written request of five members. A majority of the Committee members shall constitute a quorum for the transaction of business. The Chief Justice or his designee from among the Associate Justices shall select the chairman who shall serve at the pleasure of the Chief Justice or his designee from among the Associate Justices. The Committee shall elect a vice-chairman who shall serve for a term of one year.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Chief Justice or his designee from among the Associate Justices shall have the power to remove any member of the Committee from office for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-16.

All necessary clerical and other services required by the Committee shall be supplied by the Director of the Office of Juvenile Justice."

-----JUVENILE SERVICES/CONFORMING CHANGES

Sec. 14 Whenever the words "Administrative Office of the Courts" are used in G.S. 7A-289.1 through G.S. 7A-289.16, as said sections appear in the 1977 supplement to 1969 G.S. Replacement Volume 1B, the same shall be deleted and the words "Office of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 15 Whenever the word "Administrator" is used in G.S. 7A-289.1 through G.S. 7A-289.16, as said sections appear in the 1977 supplement to 1969 G.S. Replacement Volume 1B, the same shall be deleted and the words "Director of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 16. The title of Article 24 of Chapter 7A, as said title appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B is amended by striking

the words "Juvenile Services" and by inserting in lieu thereof the words "Intake, Probation and Aftercare".

Sec. 17. G.S. 7A-289.2(1) as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B is hereby repealed.

Sec. 18. G.S. 7A-289.2(2) as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B, is amended by striking the words "Department of Correction" and by inserting in lieu thereof the words "Office of Juvenile Justice".

Sec. 19. G.S. 7A-289.2(6) as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B, is hereby repealed.

Sec. 20. G.S. 7A-289.3, as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B is rewritten to read as follows:

"§ 7A-289.3 Intake, probation and aftercare. -- The Office of Juvenile Justice shall be responsible for administration of a statewide and uniform system of juvenile intake, probation and aftercare services in all judicial districts of the State. The Director of Juvenile Justice shall be responsible for planning, organizing and administering juvenile probation and aftercare services on a statewide basis to the end that juvenile services will be uniform throughout the State and of sufficient quality to meet the needs of the children under supervision."

Sec. 21. G.S. 7A-289.4 as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B, is rewritten to read as follows:

"§ 7A-289.4. Duties and Powers of Director of Juvenile Justice.-- The Director

of Juvenile Justice shall have the following powers and duties under the supervision of the Chief Justice or his designee from among the Associate Justices:

- (1) To plan for a statewide program of juvenile intake, probation and after-care services;
- (2) To study the various issues relating to qualifications, salary ranges, appointments of personnel on a merit basis (including chief court counselors, court counselors, secretaries and other appropriate personnel) at the State and district levels and to adopt such personnel policies as he finds to be in the best interest of the juvenile services program;
- (3) To develop a statewide plan for staff development and training so that juvenile court judges, chief court counselors, court counselors and other personnel responsible for juvenile services may be appropriately trained and qualified; such plan may include attendance at appropriate professional meetings and opportunities for educational leave for academic study;
- (4) To develop, promulgate and enforce such policies, procedures, rules and regulations as he may find necessary and appropriate to implement a statewide and uniform program of juvenile intake, probation and aftercare services.

Sec. 22. G.S. 7A-289.13 as said section appears in the 1977 Supplement to the 1969 G.S. Replacement Volume 1B is amended in line 3 by deleting the words "Division of Youth Development, Department of Human Resources or other state agencies" and inserting in lieu thereof the following words: "Office of Juvenile Justice".

Sec. 23. G.S. 7A-289.14, as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B, is hereby repealed.

Sec. 24. G.S. 7A-289.15, as said section appears in the 1977 supplement to 1969 G.S. Replacement Volume 1B, is amended in the last sentence by deleting the word "Governor" and inserting in lieu thereof the following words: "Chief Justice or his designee from among the Associate Justices."

Sec. 25 Whenever the words "Department of Human Resources" are used in G.S. 110-21 through G.S. 110-44, as said sections appear in the 1978 G.S. Replacement Volume 3A, Part I, the same shall be deleted and the words "Office of Juvenile Justice" shall be inserted in lieu thereof.

Sec. 26. G.S. 110-23(12), as the same appears in the 1978 G.S. Replacement Volume 3A, Part I, is amended in line 3 by deleting the words "Department of Correction when requested by such Department" and inserting in lieu thereof the following words: "Office of Juvenile Justice when requested by such Office".

-----SOCIAL SERVICES COMMISSION/CONFORMING CHANGES

Sec. 27. G.S. 143B-153(2)c. as said section appears in the 1978 G.S. Replacement Volume 3C is amended in line 1 by deleting the words "and delinquent".

Sec. 28. G.S. 143B-153 as said section appears in the 1978 G.S. Replacement Volume 3C, is further amended by inserting a new subsection (7) to read as follows:

"(7) The Commission shall have the power and authority, in conjunction with the Office of Juvenile Justice, to assure that treatment services are provided to children referred to the county departments of social services by the Office of Juvenile Justice."

Sec. 29. G.S. 143B-153 as said section appears in the 1978 G.S. Replace-

ment Volume is further amended by changing the number of subsection "(7)" to subsection "(8)".

-----COMMISSION FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES/CONFORMING CHANGES

Sec. 30. G.S. 143B-147 as said section appears in the 1978 G.S. Replacement Volume is amended by adding a new subsection (4) to read as follows:

"(4) The Commission shall have the power and authority, in conjunction with the Office of Juvenile Justice, to assure that treatment services are provided to children referred to local, regional or state mental health facilities by the Office of Juvenile Justice."

Sec. 31. G.S. 143B-147 as said section appears in the 1978 Replacement Volume is further amended by changing the number of subsection "(4)" to subsection "(5)".

Sec. 32. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions of the act or applications which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 33. All transfers of personnel, equipment, appropriations and functions of an agency or division transferred by this act to the Department of Crime Control and Public Safety shall be completed by October 1, 1979 but the Director of the Office of Juvenile Justice shall have authority over such personnel, equipment, appropriations and functions transferred by this act upon the effective date of this act.

Sec. 34. This act shall become effective on July 1, 1979.

ADDENDA

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ADDENDA

I. PUBLIC HEARINGS OF THE JUVENILE CODE REVISION COMMITTEE

April 29, 1977 - Raleigh

Dr. Lenore Behar	Chief of Childrens' Services Division of Mental Health
Pitt Dickey	Attorney and former Assistant Director for Administration, Division of Youth Services
Wayne Heasley	Former Director Mecklenburg County Youth Services Bureau
William M. Sheffield	Former Chairman of the Youth Services Commission
Dr. Gary Timbers	President North Carolina Association of Community-Based Services for Children and Youth

May 26, 1977 - Raleigh

Jean Donovan	Forsyth Juvenile Justice Council Winston-Salem, North Carolina
Sue Glasby	Head, Children's Services Branch Division of Social Services
Doris Horton	Attendance Counselor Pittsboro, North Carolina
Carolyn Stevens	Neuse River Council of Government (Nine Counties)
Mary Tate	Attendance Counselor and President of North Carolina School of Social Services
James Wall	Attorney at Law Wilmington, North Carolina
Bob Wilson	Youth Services Bureau Greensboro, North Carolina

May 27, 1977 - Raleigh

Dr. Thomas Danek

Administrator
Juvenile Services Division
Administrative Office of the Courts

Bill Harrington

Wayne Heasley

Former Director
Mecklenburg County Youth Services
Bureau

Dr. Dale Johnson

Formerly with the
Division of Youth Services

Earl B. Lloyd

Chief of Police, Kings Mountain
Formerly with the Training Academy
San Diego, California

Elizabeth Mann

Attendance Counselor
Sanford, North Carolina

Senator Katherine Sebo

North Carolina Senate

Captain S. B. Simpson

Youth Division
Greensboro Police Department

Tom Wilson

Director
Watauga County Department of
Social Services

June 9, 1977 - Raleigh

Dr. Hal Harris

Community Guidance Clinic
Durham, North Carolina

Judge Milton Read

District Court Judge
14th Judicial District

Dr. William Burlingame

Unit Director
Adolescent Unit
John Umstead Hospital
Butner, North Carolina

June 10, 1977 - Raleigh

Judge Thomas D. Cooper, Jr.

District Court Judge
15A Judicial District

Henry Cox

Eastern Regional Supervisor
Administrative Office of the Courts

Jean Donovan	Forsyth Juvenile Justice Council Winston-Salem, North Carolina
Albert Edwards	Representative of Youth Energy Network Winston-Salem, North Carolina
Shirley Gaines	Field Consultant North Carolina Office for Children
Bob Johnson	Associate Director Youth Services Bureau Greensboro, North Carolina
Donald Morrison	Director Johnston County Department of Social Services
Nancy Patteson	Chief Court Counselor 7th Judicial District
Benjamin Ruffin	Human Relations Council Raleigh, North Carolina
Jerry Smith	Coordinator Youth Energy Network Winston-Salem, North Carolina
James Wall	Attorney at Law Wilmington, North Carolina

July 6, 1978 - Charlotte

John R. Dietrick	President North Carolina Juvenile Detention Administrator's Association
Dan Shearer	Executive Director Youth Homes, Inc. Charlotte, North Carolina
J. Reid Potter	Attorney at Law Charlotte, North Carolina
Rosa Jones	Intake Counselor 26th Judicial District
Peter Gilchrist	District Attorney 26th Judicial District

Robert F. Thomas	Attorney for the Charlotte Police Department and President of the Police Attorneys Association
Tommy Smith	County Police Department Charlotte, North Carolina
Gil Jardine	Criminal Justice Department University of North Carolina at Charlotte
Eugene Deal	Chief Court Counselor 26th Judicial District
Lois Springer	Stanly County Department of Social Services
Parks Todd	Former Assistant Director of Division of Youth Services
Maggie Lamb Nicholson	
Mike Penney	

July 7, 1978 - Asheville

Don Pagett,	Director Juvenile Evaluation Center Swananoa, North Carolina
Roy Eller	Program Director Juvenile Evaluation Center Swananoa, North Carolina
Betty Gene Alley	Chief Court Counselor 30th Judicial District
Janet Kelly	Asheville-Buncombe Youth Services Action Group
Betty Harris	State Juvenile Detention Consultant
Beth Letherman	Social Worker Henderson County Dept. of Social Services
Larry Stoker	Assistant Public Defender Buncombe County
Dr. Jerry Coffey	Smoky Mountain Area Mental Health

Dorothy Crawford	Macon County Department of Social Services
Burnice Lewis	Field Consultant Community Based Alternatives Division of Youth Services
J. Louis Parrish	Intake Counselor 28th Judicial District
Vicki Church	Director Youth and Family Counseling Services Lexington, North Carolina
Bob Jones	Court Counselor 28th Judicial District
<u>July 12, 1978 - Raleigh</u>	
Lieutenant H. L. Moore	Juvenile Squad Raleigh Police Department
Sylvia Ruby	Chairman of Wake County Task Force
Lofi Hirshman	Educational Services for Exceptional Children
Susan Kepley	Chairman North Carolina Lutheran Women's Task Force on Children
Lieutenant C. T. Gumm	Youth Division Burlington Police Department
Dennis Grady	Deputy Director Division of Youth Services
Janet Currie	Court Counselor 20th Judicial District
Bob Atkinson	Assistant Director Institutional Services Division of Youth Services
William Casey	Director Wake County Juvenile Detention Center
Fletcher Hubbard	Chief Court Counselor 11th Judicial District
Dennis Grady	Deputy Director Division of Youth Services

July 13, 1978 - Hickory

Bruce Marshall	Past President of the North Carolina Social Services Association
Benjamin R. Carpenter	Past President of the North Carolina Directors of County Departments of Social Services and Director Gaston County Department of Social Services
Helen Cunningham	Chief Court Counselor
James Melton	Lincoln County Department of Mental Health
Howard Brown	Statesville Police Department

July 14, 1978 - Winston Salem

Jean Donovan	President Forsyth Co. Juvenile Justice Council
Douglas Pungler	Attorney for the Winston-Salem-Forsyth County Schools
Mrs. Betty Harris Cox	State Juvenile Detention Consultant
John C. Candillo	Court Counselor II 21st Judicial District
Captain S. B. Simpson	Greensboro Police Department
Harold Ellison	Inmate Cherry Street Advancement Center
Claire McNaught	Public Safety Attorney Winston Salem
Catherine B. Ebert	Co ordinator School Social Work Services Forsyth County
Judge William Freeman	21st Judicial District
Willard S. Barber	Sgt. (Juvenile Officer) Reidsville Police Department
Louise Coggins	Social Worker Forsyth County Mental Health Children and Youth

Lise Cagle	Social Worker Forsyth County Mental Health Children and Youth
Daniel Bolz	Supervisor Protective Services Forsyth County Department of Social Services
George King	Social Worker Protective Services Forsyth County Department of Social Services
Linda Garrou	Assistant Coordinator Forsyth Juvenile Justice Council
Jim Weakland	Chief Court Counselor 21st Judicial District
Ed Carr	Director Youth Opportunity Homes
Martha Lauten	Chief Court Counselor
Jean Donovan	Representing Youth Services Advisory Committee
Bill B. Harris	Attendance Counselor High Point Schools
Ellen White	Forsyth Juvenile Justice Council
Dan Beerman	Director Youth and Family Support Project
Rex B. Yates	Chief Court Counselor 23rd Judicial District
Jerry Smith	Youth Energy Network
James C. Queen	Chief Court Counselor 19th Judicial District

July 19, 1978 - Fayetteville

Sandra Edwards	Cumberland County Department of Social Services
Willie Carter	Intake Counselor 16th Judicial District

Jeanette Council	Youth Services Advisory Committee
Jack T. Gullledge	Director Richmond County Youth Services Center and Executive Director Richmond County Citizen's Commission for Children and Youth
Larry J. McGlothlin	Attorney for the Cumberland County Sheriff's Department
W. T. Brown	School Principal
Robert H. Hughes	Chief Court Counselor 16th Judicial District
Hosea Brower	Director Samarkand Manor
JoAnn Bush	Program Services Co-ordinator Samarkand Manor
John Clark	Community Based Alternatives Field Consultant, Division of Youth Services And Former Chief Court Counselor
Gary Collins	Court Counselor 16th Judicial District
Henry Cox	Regional Supervisor Administrative Office of the Courts
Ed Taylor	Assistant Administrator Juvenile Services Division
Marvin Edmunson	Juvenile Offices Cumberland County Sheriff's Department
Don Barber	Intake Counselor 4th Judicial District
SFC Robert Anneheim	Juvenile Probation Counseling Section Fort Bragg
Ida Ray Miles	Chief Court Counselor 4th Judicial District
<u>July 20, 1978 - Raleigh</u>	
Jim Ulrick	Court Psychologist 10th Judicial District
Mrs. Pat Bullard	Executive Director North Carolina Social Services Association

Dr. Lenore Behar	Chief Children and Youth Services Division of Mental Health and Mental Retardation Services
Lieutenant C. J. Brown	Durham Police Department
Reece C. Trimmer	Police Attorney Durham Police Department
Larry Stegall	Director Child Advocacy Commission of Durham
Barbara Smith	Lobbyist League of Women Voters of North Carolina
Steve Williams	Chief Court Counselor 10th Judicial District
Ethel Fuller	Caswell County Department of Social Services
W. P. Edwards	Graham Police Department
Katherine Holman	Alamance County Department of Social Services
Ann Slifkin	Attorney at Law Thorp and Anderson
Steve Shaber	Attorney at Law
Mike Swann	Attorney at Law Ragsdale, Liggett & Cheshire
Lieutenant David Williams	University Police Department Chapel Hill

July 21, 1978 - Wilmington

Betty Harris-Cox	North Carolina Juvenile Detention Association of Detention Directors
Cliff Duke	Police Attorney Wilmington Police Department
Jimmy E. Godwin	Chief Court Counselor
Kyle Ramey	Resident Director Boys Home Lake Waccamaw
Detective R. A. Noville	Wilmington Police Department
Deputy J. B. Stinson	New Hanover County Sheriff's Department
The Honorable Gilbert H. Burnette	Chief District Court Judge 5th Judicial District

July 25, 1978 - Elizabeth City

Thomas S. Watts	District Attorney 1st Judicial District
John R. Brady,	Chief Court Counselor 6th Judicial District
Vernon Buffalo	Intake Counselor 6th Judicial District
Superintendent James P. Harrell	Perquimans County Public Schools
Robert Hendrix	Chief Court Counselor 1st Judicial District
Mary Plyer	Gates County Department of Social Services
Clara Boswell	Director Edenton-Chowan Alternative School
Jean Biggs	Director Martin County Department of Social Services
Ray Goodwin	Chairman Criminal Justice Department Nash Technical Institute Rocky Mount

The Honorable Grafton Beaman

District Court Judge
1st Judicial District

July 26, 1978 - Kinston

Alma D. Johnson

Chief
Family Services Division
Wilson County Department of
Social Services

Jerry A. Smith

Director
Wilson County Department of
Social Services
Regional Office of the Hines Division
of Social Services
Greenville

Mary McMichael

Wayne County Department of
Social Services

Donna Ramsey

Intake Counselor
Director
Dobbs Training School

Nancy Patteson

Chief Court Counselor
7th Judicial District

William H. Burwell

Onslow County Law Enforcement
Legal Advisor

Doretha Branch

Director
Dobbs School
Kinston

Jimmy Blalock

Juvenile Division
Wilson County Police Department

Charles A. Hough, Jr.

Chief Court Counselor
2nd Judicial District

Sgt. Calvin Craft

Winterville Police Department

Ed Taylor

Assistant Administrator
Juvenile Services Division

Carolyn Harding

Attendance Counselor
Washington City Schools

Tom Everette

Court Counselor
2nd Judicial District

A verbatim transcript of the record of testimony from the public hearings is on tape in the office of the Division of Crime Control.

II. WRITTEN PRESENTATIONS TO THE COMMITTEE WERE MADE BY THE FOLLOWING:

James A. Adams, Superintendent
and Palmer G. Friende, Assistant
Superintendent

Forsyth County Schools

Kenneth F. England, Superintendent
and Howell H. Steed, Director of
Pupil Personnel Services

Vance County Board of Education

Katheryn Lewis

Director of Pupil Personnel
Pitt County Board of Education

Donna Ramsey

President
North Carolina Juvenile Correctional
Association

Sargeant Jerry J. Mitcham

President
North Carolina Juvenile Officers'
Association

Steve Shepherd

Hendersonville Police Department

Larry D. Whitlock

Coordinator
Human Resources Program
Western Piedmont College

W. T. Gartman, Jr.

Associate Professor
Department of Social Work
and Correctional Services
East Carolina University

Alma D. Johnson, Chief
of Family Services Division
and Jerry A. Smith, Director

Wilson County Department of
Social Services

Dr. Raymond J. Michalowski,
Associate Professor, and
Barbara Kaplan

University of North Carolina
at Charlotte

Patricia E. Hamlin, Social
Work Supervisor and
Carl R. Brittain, ACSW
Director

Surrey County Department
of Social Services

Virginia Turner

Director, Buncombe
County Juvenile Detention Home

Edwin E. Koontz

Director
Rowan County Department
of Social Services

Katherine Isbell

Wake Forest,
North Carolina

Geoffrey B. Pagett

Co-ordinator of Volunteer Services
15th Judicial District

Mark D. Vinson

Juvenile Court Counselor
4th Judicial District

Suzanne Gray, Supervisor

Family and Children's Services Unit
Beaufort County Department of
Social Services

III. REPRESENTATIVES OF AGENCIES TESTIFYING AT THE REQUEST OF THE COMMITTEE:

April 15, 1977

Department of Human Resources

Dr. Sarah Morrow
Secretary

Division of Youth Services

William Windley
Director

Office of Community Program
Coordination

Dennis Grady, Director

Special Projects
Office of the Secretary
Department of Human Resources

Lou Christian

Title XX Juvenile Delinquency
Prevention

Beth Barnes
Former Coordinator

May 12, 1977

Greensboro Police Department

Captain S. B. Simpson
Youth Division

May 13, 1977

Children's Services
Division of Mental Health

Dr. Lenore Behar, Chief

Children's Services Branch
Division of Social Services

Sue Glasby, Head

Division of Youth Services

William Windley
Director

Division of Vocational
Rehabilitation

Educational Specialist for
Middle and Junior High Schools

Wayne Dillon

Juvenile Services Division

Dr. Thomas Danek, Administrator

Mental Health Commission
Division of Mental Health

Dr. Richard Surles

June 24, 1977

Division of Youth Services

Thealeta Monroe

Pupil Personnel Services

Thelma Lennon

Department of Public Instruction

IV. ADDITIONAL PERSONS INTERVIEWED

<u>Date</u>	<u>Appears Before</u>	<u>Individuals</u>
April 15, 1977	Staff	John W. Kennedy Chairman of the Youth Services Commission
June 30, 1977	Staff	Gary Green, Psychologist Dillon School Butner, North Carolina
July 20, 1977	Staff	Dr. Minta Saunders
July 21, 1977	Richard Martin Staff and Mr. Doyle Wood, LEAA, Atlanta (included visit to group homes)	Anita Desio, Administrative Assistant, Haven House Raleigh, North Carolina Mary Leuba, Wake County Court Volunteer Coordinator Jim Ulrick, Wake County Court Psychologist
July 8, 1977	Services Subcommittee	Judge Gordon Gentry District Court Judge 18th Judicial District
July 22, 1977	Services Subcommittee	Staff of Youth Care, Inc. Greensboro, North Carolina
July 25, 1977	Staff	Junius S. Grimes, III Director CARELINE
August 1, 1977	Charles Dunn and Staff	Dudley Flood Assistant Superintendent of Human Relations and Student Affairs Department of Public Instruction
August 16, 1977	Charles Dunn, Representative Margaret Tennille and Staff	Dr. Minta Saunders, Assistant Secretary for Children, Department of Human Resources

		Wiley Teal, Chief of Detention, Division of Youth Services
		John M. Syria, Assistant Director for Programs and Policies, Division of Social Services
		Sue Glasby, Chief of Children's Services Section, Division of Social Services
August 26, 1977	Full Committee	Gil Jardine Criminal Justice Department University of North Carolina at Charlotte
September 15-16, 1977	Staff (Included visit to facilities)	The Honorable Judge Gilbert H. Burnette Chief District Court Judge 5th Judicial District
		Charlie Jones, Director Ocean Sciences Institute Wilmington, North Carolina
		Personnel at the New Hanover County Juvenile Services Center
		Members of the New Hanover County Juvenile Services Center Disposition Team
September 30, 1977	Services Subcommittee	John Dietrick, President National Juvenile Detention Association
September 30, 1977	Laws Subcommittee	Gwen Ingram, Director Youth Center National Council on Crime and Delinquency Washington, D. C.
October 5, 1977	Richard Martin and Staff (Included visit to facility)	William Casey, Director Wake County Detention Home
November 4, 1977	Services Subcommittee	Jim Johnson
November 14, 1977	Laws Subcommittee (Included visit to facility)	James Daugherty Training Staff, Wright School Durham, North Carolina

February 13, 1978	Staff	Marvin Williams N.C. Justice Academy
March 6, 1978	Staff	Judy Kornegay Special Counsel, Dorothea Dix Hospital
March 13, 1978	Staff	Thomas J. Barnett, Head Wilderness Camps
March 13, 1978	Staff	Dr. Lenore Behar, Chief Children & Youth Services Division of Mental Health
		Dr. Mary Kilburn, Head Special Needs Branch Division of Social Services
		Dr. Helen Crisp Asst. Director for Treatment and Evaluation Division of Youth Services
March 14, 1978	Staff	Dr. Thomas A. Danek Administrator Juvenile Services Division
March 20, 1978	Staff	Clara Oppenheim Adolescent Unit Dorothea Dix Hospital
March 22, 1978	Staff	Diane Porter Division of Youth Services
April 18, 1978	Barbara Sarudy and Staff	Captain S. B. Simpson Youth Division Greensboro Police Department
		J. Manley Dodson Chief Court Counselor 18th Judicial District
		Dr. Johnny Presson, Asst. Superintendent Guilford County Schools
		Margaret Zimmerman Guilford County Schools
		James King Guilford County Schools

April 26, 1978	Richard Martin and Staff (Included visits to facilities)	Larry Orendorf, Director Camp E-TOH-KAL-U Therapeutic Wilderness Camp Hendersonville, North Carolina
		Bob Pickard, Former Director Camp E-TOH-KAL-U
		Don Padgett, Director Juvenile Evaluation Center Swannanoa, North Carolina
April 27, 1978	Richard Martin and Staff	Betty G. Alley Chief Court Counselor 30th Judicial District
		Leah Jaudon Court Counselor in charge of Specialized Foster Care Program 30th Judicial District
		Lane Mallonee Intake Counselor 30th Judicial District
May 3, 1978	Judge George F. Bason and Sarah Patterson of the Staff	Juvenile Officers Association
May 10, 1978	Robert Collins of the Staff	Max Jackson, Director Division for Field Services Bureau for Social Services Department for Human Resources Frankfurt, Kentucky
May 11, 1978	Robert Collins of the Staff	June Deluca, Program Planner Bureau for Social Services Dept. for Human Resources Frankfurt, Kentucky
		Ron Camic, Residential Services Specialist Bureau for Social Services Dept. for Human Resources Frankfurt, Kentucky
		Margaret Hockensmith, Executive Assistant to Commissioner Bureau for Social Services Dept. for Human Resources Frankfurt, Kentucky

Charles Bonta, Community Treatment
Specialist
Bureau for Social Services
Dept. for Human Resources
Frankfurt, Kentucky

Jean Kendall, Systems Administrator
Bureau for Social Services
Dept. for Human Resources
Frankfurt, Kentucky

Albert Linder, Staff Assistant
to Director
Division for Field Services
Bureau for Social Services
Dept. for Human Resources
Frankfurt, Kentucky

Jack Lewis, Commissioner
Bureau for Social Services
Dept. for Human Resources
Frankfurt, Kentucky

Robert McClure, Educational
Coordinator
Bureau for Social Services
Dept. for Human Resources
Frankfurt, Kentucky

May 17, 1978

Sarah Patterson
of the Staff

Nancy Patteson
Chief Court Counselor
7th Judicial District

May 30, 1978

Charles Dunn
and the Staff

Captain S.B. Simpson
Youth Division
Greensboro Police Department

August 24, 1978

Judge George F.
Bason, Richard
Martin, and
Staff

Task Force on Abuse and Neglect

September 28,
1978

Charles Dunn,
Richard Martin,
and Staff

Dr. J. H. Melton
Deputy State Superintendent
Department of Public Instruction

Joe Little
CETA Coordinator
Department of Public Instruction

Dudley Flood
Assistant Superintendent of
Human Relations and Student
Affairs

Thelma Lennon, Director
Pupil Personnel Services
Department of Public Instruction

Dr. Jerry Beaver, Director
Secondary Education
Department of Public Instruction

Vaden B. Hairr
Associate Director
Vocational Education of the
Department of Public Instruction

Ben Douglas Robertson
Consultant in Social Studies
Department of Public Instruction

Dwight Whitted
Consultant in School Social Work
Department of Public Instruction

Robert U. Hinkle, Jr.
Juvenile Justice Specialist
Division of Crime Control

OTHER PERSONS APPEARING BEFORE THE COMMITTEE

March 19, 1978

Dr. Sarah Morrow, Secretary
Department of Human Resources

March 31, 1978

Dennis Grady, Director
Office of Community Program
Coordination

May 12, 1978

Diane Porter
Division of Youth Services

William Windley, Director
Division of Youth Services

V. RECENTLY ENACTED AND PROPOSED CODES OF OTHER STATES REVIEWED

California - California Laws Relating to Youthful Offenders, including the Youth Authority Act, the Juvenile Court Law, and 1976 Legislative Changes.

Florida - Florida Statutes, Chapter 39 and 959 (procedures to be followed in processing juvenile offenders); Committee substitute for Senate Bill No. 119 (effective 10/1/78); A Summary of the Interim Report on the Impact of the 1975 CINS Decriminalization Legislation (report on removal of status offenders from juvenile justice system); and Administrative Rules for Department of Health and Rehabilitative Services (defines minimum standards for care and treatment of juveniles placed in Youth Services Program).

Georgia - The Juvenile Court Code (as amended through 1976).

Illinois - Illinois Juvenile Court Act, 1974 revision of 1966 legislation.

Indiana - Indiana Juvenile Code (Proposed Final Draft, 1977).

Iowa - Report of the Juvenile Justice Study Committee; House File 248; 1977.

Maine - H.P. 1794 - L.D. 1894 (An Act to Establish the Maine Juvenile Code - effective 7/19/77); Final Report of Maine's Commission to Revise the Statutes Relating to Juveniles.

Maryland - House of Delegates Bills No. 363, 368, 369, 380, 692, 693, 716, 820, 865-867, 997, 1884; Senate Bills No. 331, 401, 625, 850; Title 3, Subtitle 8, 33-801-33-833 Juvenile Causes.

Michigan - House Bill No. 4376 (pending), 1977.

Oregon - 1976 proposed revision of Oregon Juvenile Code; Senate Bill 2 (revises Juvenile Code); A - B - C - Engrossed copies of Senate Bill 2.

Pennsylvania - Juvenile Court Act 333 of 1972 as amended by Act 41 of 1977; Senate Bill 852, enacted at 1976 Session, Public Welfare Laws - Child Welfare Program.

South Carolina - Youth Services Act of 1975, Youth Services Legislation to revise Juvenile Code, commonly referred to as Children Unable to Cope; Youth Bureau Operational Procedure Manual, outlines Youth Bureau Services, philosophy and goals with respect to status offenders.

Utah - House Bill 340, Diversion of Non-criminal Offenders, 1977.

Virginia - Juvenile and Domestic Relations District Courts.

An Act to amend and reenact § § 63.1-56, 63.1-195, 63.1-204 and 63.1-248.9 as severally amended, of the Code of Virginia; to amend the Code of Virginia by adding in Title 16.1 a chapter numbered 11, consisting of sections numbered 16.1-226 through 16.1-329 and by adding sections numbered 53-327.1, 53-329.1 and 63.1-206.1; and to repeal Chapter 8 of Title 16.1 of the Code of Virginia consisting of sections numbered 16.1-139 through 16.1-217, and § 63.1-248.12, as severally amended, the amended, added and repealed sections relating to the establishment of juvenile and domestic relations district courts and other laws regarding services to children.

Enacted, 1977.

Washington - Third Substitute House Bill Number 371, Chapter 291 - Basic Juvenile Court Act, ratified June 10, 1977; effective July 1, 1978.

VI. BOOKS

- Council of Judges of the National Council on Crime and Delinquency. Model Rules for Juvenile Courts. New York: National Council on Crime and Delinquency, 1969.
- Council of Judges of the National Council on Crime and Delinquency. Model Sentencing Act (2nd ed.). Hackensack, N.J.: The National Council on Crime and Delinquency, 1972.
- Council of State Governments. Juvenile Facilities: Functional Criteria. Lexington, Kentucky: Grant No. 76-NI-0080, 1977.
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- National Juvenile Law Center. The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act. St. Louis: St. Louis University School of Law, 1976.
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Stapleton, W. Vaughn and Lee E. Teitelbaum. In Defense of Youth. New York: Russell Sage Foundation, 1972.

States' Criminal Justice Information and Assistance Project, The Council of State Governments, Status Offenders: A Working Definition. Lexington, Kentucky: The Council of State Governments, September, 1975.

Thomas, Mason P., Jr. and L. Lynn Hogue. Kids and Cops. Chapel Hill, N.C.: Institute of Government, 1974.

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Weinstein, Noah. Legal Rights of Children. Reno, Nevada: National Council of Juvenile Court Judges, 1973.

Wolfgang, Marvin. Delinquency in a Birth Cohort. Chicago, Illinois: University of Chicago, 1972.

VII. GOVERNMENTAL DOCUMENTS

Juvenile Justice and Delinquency Prevention Act of 1974, 93rd Congress,
September, 1974.

United States Congressional Record, Vol. 120 (1974):

July 1, H.R. 15276 considered and passed House.

July 25, considered and passed Senate.

July 31, considered and passed House, amended, in lieu of H.R. 15276

August 19, Senate agreed to conference report.

August 21, House agreed to conference report.

Office of Human Development and Office of Youth Development, Model Acts
for Family Courts and State-Local Children's Programs. Washington,
D.C.: United States Department of Health, Education and Welfare.
(1975), DHEW Publication No. 75-26041.

VIII. REPORTS

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ERRATA

1. In the numbering of pages, there are two pages numbered 6. There is no duplication in content.
2. In the numbering of pages, there are no pages numbered 83 or 163. There is no omission in content.



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